

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF OHIO

3 WESTERN DIVISION

4 CASE NO.: 1:08-CV-00737

5
6 SAMUEL A. CAMPBELL

PLAINTIFF

7 vs.

8 THE CITY OF SPRINGBORO, OHIO,
9 ET AL.

DEFENDANTS

10 * * * * *

11 DEPONENT:

OFFICER NICK CLARK

12 DATE:

FEBRUARY 4, 2010

13 * * * * *

14
15 **COPY**

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17 Mindy Davis

18 Certified Court Reporter

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INDEX

Page

Cross-Examination By Mr. Brannon

4

EXHIBITS

Page

Deposition Exhibit S17~	42
Deposition Exhibit S2~	56
Deposition Exhibit S5~	87
Deposition Exhibit S1~	104
Deposition Exhibit S3~	109
Deposition Exhibit 1	175
Deposition Exhibit S5B~	176
Deposition Exhibit S5C~	187
Deposition Exhibit S15~	214
Deposition Exhibit S14~	222
Deposition Exhibit S9~	239

1 The deposition of OFFICER NICK CLARK, taken for
2 the purpose of discovery and/or use as evidence in
3 the within action, pursuant to notice, heretofore
4 taken at the office of Rendigs, Fry, Kiely & Dennis,
5 900 Fourth & Vine Tower, 1 West Fourth Street,
6 Cincinnati, Ohio, on January 4, 2010, at 9:00 a.m.,
7 upon oral examination, and to be used in accordance
8 with the Ohio Rules of Federal Procedure.

9 * * * * *

10 APPEARANCES

11 REPRESENTING THE PLAINTIFF:

12 Douglas D. Brannon, Esq
13 Brannon & Associates
14 130 West Second Street
Suite 900
Dayton, Ohio 45402

15 REPRESENTING THE DEFENDANTS:

16 Wilson G. Weisenfelder, Esq.
17 Rendigs, Fry, Kiely & Dennis
900 Fourth & Vine Tower
1 West Fourth Street
18 Cincinnati, Ohio 45202-3688
(513)381-9200

19 ALSO PRESENT: Michael Stine, Glatfelter Ins.
20

21 * * * * *

1 OFFICER NICK CLARK,
2 called on behalf of the Plaintiff, after having been
3 first duly sworn, was examined and deposed as
4 follows:

5 CROSS-EXAMINATION

6 BY MR. BRANNON:

7 Q. Mr. Clark, my name is Doug Brannon, as we
8 just got introduced to each other here. I'm here
9 today for the purposes of taking your deposition, as
10 I'm sure your attorney's already explained to you.

11 A. Yes.

12 Q. You most likely testified under oath
13 before and this is no different than that as far as
14 the answers. I'm going to ask you various
15 questions. I'm going to assume that you understand
16 those questions before giving me an answer. If you
17 don't, please say so and I'll be more than happy to
18 restate the question so that we get a clear record
19 of what's transpired here in this case.

20 If you ever need to take a break or
21 anything like that, all I ask is that you finish
22 answering the question that's on the table and then
23 we can break after that. Fair enough?

24 A. Yes.

25 Q. Could you please state your full name for

1 the record?

2 A. Steven Nicholas Clark.

3 Q. And what is your current address?

4 A. My home address?

5 MR. WEISENFELDER: I'm not sure we can
6 claim -- can we skip the home address?

7 MR. BRANNON: If you agree to -- if I ask
8 for it privately, that you'll provide it to
9 me; is that fair, if you'll stipulate to that?

10 MR. WEISENFELDER: With certain
11 conditions that it's not disclosed beyond
12 what's reasonably necessary.

13 MR. BRANNON: For the case. And I
14 understand that officers are often hesitant to
15 give out their home address.

16 MR. WEISENFELDER: And to the extent that
17 he would need to be served with anything, I
18 will accept service on his behalf.

19 MR. BRANNON: Okay. Fair enough.

20 BY MR. BRANNON:

21 Q. Your date of birth, Mr. Clark?

22 A. **REDACTED** 1979.

23 MR. BRANNON: And off the record, your
24 Social Security number?

25 (OFF THE RECORD)

1 BY MR. BRANNON:

2 Q. Are you married?

3 A. No.

4 Q. Have you ever been married?

5 A. Yes.

6 Q. To whom?

7 A. Steven Warner.

8 Q. Steven?

9 A. Warner, Steven Nicole Warner.

10 Q. I take it Steven is a female?

11 A. Yes, she is. As far as I know, that's not
12 legal in the State of Ohio.

13 Q. Okay. And when were you married to her,
14 from what period of time?

15 A. '06 to '07, June to June.

16 Q. Lasted for about one year?

17 A. Yeah.

18 Q. Did that end in divorce, dissolution?

19 A. Divorce.

20 Q. Any children?

21 A. Yes.

22 Q. How many?

23 A. One.

24 Q. How old?

25 A. Three weeks.

1 Q. Congratulations.

2 A. Thank you.

3 Q. And who is the mother of that child?

4 A. Jennifer Dean.

5 Q. D-E-E?

6 A. D-E-A-N.

7 Q. And do you have anybody currently residing
8 with you?

9 A. Brian Hawk.

10 Q. How long have you and Brian Hawk lived
11 together?

12 A. He's stayed with me for about four years,
13 since he lost his apartment.

14 Q. And it's my understanding that Brian Hawk
15 is a Springboro police officer; is that correct?

16 A. Correct.

17 Q. Have you ever lived with any other
18 Springboro police officers?

19 A. No, I have not.

20 Q. The residence that you live in, is that
21 your residence and he rents from you or how does
22 that work?

23 A. Correct. I own it, he rents from me.

24 Q. Is it a single-family house or do you own
25 a multi-family?

1 A. It's a single-family house.

2 Q. Can you give me some idea of your
3 educational background?

4 A. I graduated high school in 1998 from the
5 City of Lebanon. I attended the Great Oaks Police
6 Academy. I don't know the exact month, sometime in
7 2000, I believe. After graduating that, I did
8 attend some on-line classes. I believe I have about
9 60 credit -- close to 60 credit hours.

10 Q. And which academy did you say that was, I
11 didn't catch the name?

12 A. Great Oaks in Sharonville.

13 Q. Great Oaks Academy. And at Great Oaks,
14 did you receive any awards or distinguishments --

15 A. I --

16 MR. WEISENFELDER: Let him finish the
17 question.

18 A. I'm sorry, I thought that was the end of
19 the question.

20 Q. Go ahead.

21 A. I was the sergeant-at-arms of the class
22 and I placed second in the shooting competition.

23 Q. And what does sergeant-at-arms of the
24 class mean?

25 A. Basically there's the president, the

1 vice-president, and the sergeant-at-arms, and
2 anything that came up as to a discussion in terms of
3 a vote, I was there for the vote.

4 Q. Was that an elected position?

5 A. Yes.

6 Q. So you were elected by your classmates?

7 A. Correct.

8 Q. And you also stated that you had 60 hours
9 of additional schooling that you took on-line?

10 A. Yes.

11 Q. Where did you take that on-line at?

12 A. University of Phoenix.

13 Q. And in what areas were you studying or
14 were you looking to get a degree in?

15 A. Business.

16 Q. So would I be correct in stating that
17 before you became a Springboro police officer, that
18 the Great Oaks Academy, where you graduated in 2000,
19 was the extent of your training?

20 A. Yes.

21 Q. I'm sorry, training in law enforcement?

22 A. Yes.

23 Q. And you received no other training besides
24 that, pertaining to law enforcement, before becoming
25 a Springboro police officer?

1 A. Well, I was a dispatcher for the police
2 department for a period of about a year before I
3 went to the academy.

4 Q. Okay. Let's go into your employment
5 history then. We'll start from when did you become
6 a Springboro police officer?

7 A. I was appointed to the position of police
8 officer at the age of 20-and-a-half.

9 Q. And when you say appointed, what do you
10 mean by that?

11 A. I was a cadet. I was hired from being a
12 cadet dispatcher to a police officer. You could not
13 attend the police academy until you were
14 20-and-a-half years old, which meant that you would
15 graduate when you were 21.

16 Q. Okay. And in what year was that
17 appointment then?

18 A. 2000.

19 Q. Now, let's go ahead and take me back. I
20 take it your job previous to that was a dispatcher
21 for the Springboro Police Department?

22 A. Correct. Yes.

23 Q. How long did you do that?

24 A. Since June of 1999. I believe the date
25 was June the 10th.

1 Q. And what were your duties as a dispatcher
2 then?

3 A. Handle emergency calls, 911, answer the
4 non-emergency line, put calls into the computerated
5 dispatch system, dispatch officers to calls, and I
6 dispatched the fire department to calls.

7 Q. And what type of job have you held prior
8 to being a dispatcher?

9 A. I'm sorry?

10 Q. We're going backwards in time.

11 A. Okay.

12 Q. You were a police officer dispatcher.
13 What before then?

14 A. Before that, I worked with my mother. She
15 owns a landscaping supply company and I delivered
16 mulch for her.

17 Q. Was that mostly in high school then?

18 A. Yes.

19 Q. Did you have any other prior exposure to
20 law enforcement growing up before you became a
21 dispatcher with Springboro?

22 A. Before I became a dispatcher, I rode as a
23 ride-along with the Clearcreek officers in the
24 township where I lived at the time.

25 Q. Was that during high school or was that

1 after you graduated high school?

2 A. Both.

3 Q. And how many ride-alongs did you do,
4 approximately?

5 A. More than 20. I don't know the exact
6 number.

7 Q. I take it you never served in the
8 military?

9 A. No, sir.

10 Q. Do you belong to any organizations, clubs,
11 anything like that?

12 A. No.

13 Q. I know that the incidents that we're here
14 about today happened in 2007 and 2008. Did you at
15 that time belong to any clubs, memberships,
16 organizations?

17 A. Yes.

18 Q. Which ones?

19 A. The North American Police Work Dog
20 Association.

21 Q. Any other ones?

22 A. Miami Valley Police Canine Association,
23 Ohio Law Enforcement Canine Association, and the
24 International Police Mountain Bike Association.

25 Q. Tell me what the North American Police

1 Work Dog Association is.

2 A. North American Police Work Dog Association
3 is a group of master trainers and they go around the
4 country doing seminars, helping teams work on
5 different things with dogs. They hold the national
6 workshops. They also provide additional
7 certifications for handlers if they want them.

8 Q. And was this an association that you were
9 actively involved in or was this sort of an
10 association that put on training that you'd
11 participate in from time to time?

12 A. Somewhat of both. You had to maintain
13 yearly dues to be in the organization. And those
14 had to come out of my pocket, not the city's. The
15 certification you didn't have to have, but there was
16 a period of time where I did do it. Other than
17 that, I did go to one of the seminars.

18 Q. Okay. And by certification, what do you
19 mean that you did do it, but you didn't have to do
20 it?

21 A. It's not required by state law, it's just
22 their certification that you can take.

23 Q. Okay. For what period of time were you
24 certified, then, with the North American Police Work
25 Dog Association?

1 A. From the time I graduated -- or, I'm
2 sorry, completed dog school, that would have been a
3 one-year period from the date of that certificate,
4 and I believe that was 2005 to 2006. And then I've
5 re-upped just the narcotics portion of the
6 certificate because I was unable to, with the wrist
7 surgery, do the patrol portion.

8 Q. Okay. So if I'm correct in understanding,
9 your certification with them ended in 2006?

10 A. One of them.

11 Q. One of them. When did the other one end?

12 A. It would have been good for another year.
13 I'd have to see the document to tell you. I don't
14 remember when I re-upped it.

15 Q. But around 2007?

16 A. It could have been late 2007, early 2008.

17 Q. Okay. Now, you mentioned that to be a
18 member of that organization, you had to be a master
19 trainer?

20 A. No.

21 Q. No.

22 A. No, that's not --

23 Q. Go ahead and correct me.

24 A. You may have misunderstood me. Master
25 trainers run the training programs and the seminars.

1 Q. So can anybody join this organization or
2 is it just police canine handlers?

3 A. As far as I know, it's just police canine
4 handlers. That's all I ever saw at the workshops.

5 Q. Okay. You mentioned that you took some
6 training through the North American Police Work Dog
7 Association. What training did you take through
8 them?

9 A. I took a national workshop in 2006 in a
10 town near Cleveland. I took narcotics, canine first
11 aid, bulk narcotics response to aggression and
12 tracking.

13 Q. Tell me about who the Miami Valley Police
14 Canine Association is.

15 A. Well, Miami Valley Police Canine
16 Association is the group of dog handlers that train
17 together on a weekly basis throughout Warren and
18 Clinton County. That consists of dog handlers from
19 multiple different departments. They usually get
20 together every Wednesday.

21 Q. Okay. So that's mainly confined to Warren
22 and Clinton County officers and their canines?

23 A. Yes. There are some members from
24 Cincinnati that would come up on an occasional basis
25 and there are members from Dayton and Trotwood.

1 Q. Approximately how many people belong to
2 that?

3 A. That's hard for me to say. I couldn't
4 give you an exact number. More than 20, but
5 probably not exceeding 30.

6 Q. Fair enough. Who is that organized by
7 mainly?

8 A. At the present time, I don't know who the
9 president and vice-president are at the time.

10 Q. 2007, 2008, who would have been the
11 president then?

12 A. John Patrick.

13 Q. And who is John Patrick?

14 A. He was a dog handler from the Ohio
15 Department of Natural Resources.

16 Q. And you said that this group would train
17 on a weekly basis then?

18 A. Correct.

19 Q. How often would you train with this group
20 in the 2007/2008 time frame, generally?

21 A. As many times as I could.

22 Q. Would that be detailed, then, in your
23 training logs for Spike most likely?

24 A. Yes.

25 Q. Did you ever hold any positions with the

1 Miami Valley Police Canine Association?

2 A. No, I did not.

3 Q. Go ahead now and tell me about the Ohio
4 Law Enforcement Canine Association.

5 A. The Ohio Law Enforcement Canine
6 Association is a group very similar to the Miami
7 Valley Police Canine Association. However, they are
8 more geared towards the northern portion. I refer
9 to it as the northern portion, but it would be
10 Montgomery County. There are a lot of Montgomery
11 County dog handlers, Montgomery County Sheriff's
12 Office and I believe the president is a Montgomery
13 County Sheriff's deputy.

14 Q. Would that have been true at the time of
15 2007/2008?

16 A. Yes.

17 Q. How active were you in the Ohio Law
18 Enforcement Canine Association?

19 A. My activity was limited with them.
20 Basically those are training groups. And so
21 whenever you train with them, that's when you would
22 be considered active with them.

23 Q. And would every time that you trained with
24 them, would that also be detailed in your training
25 logs for your canine?

1 A. I'm not sure that it would be specific to
2 that group. It may not specifically say that I was
3 training with that group.

4 Q. Okay. And it's my understanding that you
5 operated a canine for Springboro from the time
6 period of about 2006 to 2008, correct?

7 A. Correct.

8 Q. And during that time period, how many
9 times would you estimate you trained with the Ohio
10 Law Enforcement Canine Association with that group?

11 A. Maybe six to 10 times.

12 Q. So a couple of times a year, two, three
13 times a year maybe?

14 A. Yes.

15 Q. You mentioned that the Miami Valley Police
16 Canine Association mainly consisted of officers and
17 deputies in Warren and Clinton Counties, correct?

18 A. Correct.

19 Q. I take it that the canine community and
20 the officers, it's a relatively small group, number
21 of officers in that region that have dogs and work
22 with dogs; am I correct?

23 A. Correct.

24 Q. Approximately how many officers and
25 deputies and people in Warren County handle a

1 canine, to your knowledge?

2 A. Can you give me a second to think about
3 that?

4 Q. Sure.

5 A. Around seven to eight at any given time.

6 Q. And how about for Clinton County?

7 A. Wilmington and then the Clinton County
8 Sheriff's Office has a canine.

9 Q. One dog for each one of those entities?

10 A. Correct.

11 Q. Okay. So they have two?

12 A. Two in Clinton County.

13 Q. Two dogs there and about eight or nine in
14 Warren County?

15 A. Correct.

16 Q. Tell me about the International Mountain
17 Bike Association.

18 A. Before I became a dog handler, I was a
19 bicycle officer. And I had to take the
20 International Police Mountain Bike Association
21 course for bicycle officers. I completed the course
22 in Centerville with the instructors and then became
23 a member.

24 Q. Okay. And you became a police officer in
25 what month of 2000 then with Springboro?

1 A. Honestly, I don't remember.

2 Q. I want to go through and have you detail
3 for me each position you held within the Springboro
4 Police Department until your most recent, starting
5 with when you first came on with Springboro. What
6 was your title, what did you do?

7 A. Like I said, I started as a dispatcher,
8 moved to cadet. I became a police officer, then I
9 became a bicycle officer, then I was the community
10 police relations officer, basically setting up the
11 crime watches in neighborhoods. After that, I was
12 appointed to officer in charge. And then the last
13 position I would have held would have been the
14 canine officer.

15 Q. Okay. Starting with your first duty as an
16 officer, what did that entail; was that a road
17 patrol, what was that?

18 A. Road patrol.

19 Q. What sorts of situations, then, would you
20 deal with as a road patrol officer, typically?

21 A. Any number, domestics, robberies, traffic
22 offenses, thefts, just about anything you could
23 think of.

24 Q. Anything that dispatch gave you a call
25 on --

1 A. Correct.

2 Q. -- you're the guy that would handle that?

3 A. Yes.

4 Q. Tell me about the community makeup of
5 Springboro itself. How would you classify it from a
6 crime standpoint? Is it a crime area with gang
7 activity, is it middle-class families with, you
8 know, relatively a low crime rate? How would you
9 describe the patrol limits that you had within the
10 City of Springboro in Springboro itself?

11 A. There was a mixture of lower class, middle
12 class, upper middle class, and then upper-class
13 people within the city, families. The crime rate
14 was not high. There was no gang activity.

15 Q. Was there a large amount of drug activity
16 in Springboro during the time that you were there?

17 A. I'm not sure what you mean by large.

18 Q. Was there, you know, frequency to
19 encounter large amounts of cocaine, heroin, crack?

20 A. Large amounts, no.

21 Q. Were you dealing with mostly small
22 amounts, you know, kids with marijuana, you know,
23 personal use type quantities?

24 A. Not necessarily, no. I did arrest several
25 people for heroin violations. We had a lot of

1 heroin arrests, heroin overdoses. I did arrest
2 several people for possession of crack cocaine, but
3 not in large quantities. The majority of the
4 arrests -- or, I'm sorry, drug possession charges,
5 yes, would have to deal with marijuana.

6 Q. In Springboro, the typical people that you
7 would have to deal with, would you consider them,
8 you know, the community, comprised of dangerous
9 citizens?

10 A. No.

11 MR. WEISENFELDER: Objection as to the
12 form. Go ahead.

13 Q. And as far as the makeup of the city
14 itself, is it rural farmland, is it mostly
15 residential, is there industrial, what mostly
16 comprises Springboro?

17 A. A mix of industrial and residential.

18 Q. Is that heavy industrial manufacturing,
19 light industrial, smaller companies or --

20 A. Some of it's heavy. Some of the
21 businesses are heavy industrial manufacturing
22 facilities and some of them are small.

23 Q. Can you give me an idea of what the
24 Springboro corporation limits are, where they
25 typically run, north, south, east, west, what the

1 boundaries are?

2 A. From about -- on 741 at the south limit
3 would be right around Red Lion Five Points Road
4 intersection or just south of the high school all
5 the way to Austin Pike at the north end. To the
6 west would be 75 and to the east would be Red Lion
7 Five Points Road again.

8 Q. Approximately what's the distance that
9 that would encompass? Do you know how many square
10 miles or how large of a population you have in that
11 area?

12 A. Approximately, I believe it's around 15
13 square miles.

14 Q. Let's go back to your function as a
15 bicycle officer for Springboro. How long were you
16 on bike patrol?

17 A. I'd have to look.

18 Q. Approximately, is this a one summer --

19 A. Three years maybe.

20 MR. WEISENFELDER: If you can estimate,
21 but don't guess.

22 A. Two to three years, I would say.

23 Q. How long were you on road patrol before
24 bicycle patrol?

25 A. Three or four years.

1 Q. Was bicycle patrol basically a summertime
2 only thing or did you do that year-round?

3 A. It went into the fall, not during the
4 winter.

5 Q. Did you go back to being a regular patrol
6 officer then during the winter months?

7 A. Yes.

8 Q. Tell me about your function as a community
9 PR officer.

10 A. My function there, as far as the city was
11 concerned, was to address specific complaints that
12 were not of an urgent matter, such as recurring --
13 what people thought may have been suspicious
14 vehicles and things of that nature, that they
15 couldn't catch at the time or that the people were
16 not calling in at the time. I would then go out,
17 talk to the people and see if they wanted to
18 organize a community watch program.

19 Q. And how long did you act as a community PR
20 officer?

21 A. The entire time I was a bicycle officer.

22 Q. So those duties would have overlapped?

23 A. Yes.

24 Q. So that's about three years there, also?

25 A. Yes.

1 Q. Tell me about what an officer in charge
2 is.

3 A. Officer in charge is the supervisor of the
4 shift in absence of a sergeant.

5 Q. How large of a department is Springboro?
6 How many officers, sergeants is it composed of,
7 approximately?

8 MR. WEISENFELDER: Time frame?

9 Q. Time frame, 2007/2008.

10 A. The number was in the 20s. I don't have
11 the exact number. We were back and forth with
12 people.

13 Q. You said that you would act as an officer
14 in charge if there wasn't a sergeant on duty,
15 correct?

16 A. If I was the highest ranking OIC, the most
17 senior OIC on the shift in absence of a sergeant,
18 yes.

19 Q. How often would there not be a sergeant on
20 duty? Was a sergeant only on during a day shift,
21 was a sergeant generally available 24 hours, 24/7,
22 during this 2007/2008 time frame?

23 A. We had three shift sergeants for days,
24 seconds, midnights. There were two OICs generally
25 placed under each sergeant on each shift. It could

1 range from two to three days that you would not have
2 a sergeant on your shift depending upon their
3 schedule.

4 Q. How long were you an officer in charge
5 for, that you were designated with that?

6 A. Four years, four-and-a-half years.

7 Q. Approximately which years were those?

8 A. Late 2004, early 2005. And that is just a
9 guess. I don't have the paperwork in front of me.

10 Q. Was when you started?

11 A. That's an estimate. Until the -- until I
12 stopped working at Springboro.

13 Q. And then your last assignment was a canine
14 officer, correct?

15 A. Yes.

16 Q. How would you describe your duties as a
17 canine officer?

18 A. I handled the same calls as I did as a
19 patrol officer except when there was a need for
20 canine usage in the city or for a mutual aid request
21 for an adjoining jurisdiction, I would handle or
22 respond to that call per request.

23 Q. And when did your termination cease with
24 the City of Springboro?

25 A. October 9, 2009.

1 Q. What was the reason for your leaving
2 Springboro?

3 A. I was discharged.

4 Q. And why were you discharged?

5 A. I have retained counsel. There is a
6 future lawsuit pending. My attorney is Eric Deters
7 and I would refer you to him for that.

8 Q. Let's try this a different way. Why did
9 they tell you that you were discharged, what reason
10 did they give you? I'm understanding that that's in
11 dispute or that you dispute that. Why did they tell
12 you they discharged you then?

13 A. Absent without leave.

14 Q. And what does absent without leave mean?

15 A. Being injured, not being able to return to
16 work, and being out of approved time.

17 Q. If I'm understanding that correctly, that
18 means that you did not get preapproved for time off.
19 Is that what that means?

20 A. That would be a subject that I would have
21 to refer you to Mr. Deters for. That's in dispute.

22 Q. Okay. But is that what they're accusing
23 you of is not getting permission to take time off
24 and taking time off; is that the reason why they're
25 saying that they discharged you, to your

1 understanding?

2 A. No.

3 Q. Okay. Correct me then.

4 A. I'm not sure how to answer that. I was
5 approved for the time off. I was discharged after
6 being approved. I don't know why.

7 Q. Have you ever been, during your employment
8 with the City of Springboro Police Department, have
9 you ever been disciplined in any way, shape or form?

10 A. Yes.

11 MR. WEISENFELDER: Objection. Go ahead.

12 Q. Tell me about those occurrences.

13 A. I was involved in an incident that -- are
14 you referring to any discipline whatsoever?

15 Q. Any discipline that you would have
16 received whatsoever after you became an officer with
17 the City of Springboro.

18 MR. WEISENFELDER: I'm just going to note
19 the continuing objection to any reference to
20 discipline.

21 MR. BRANNON: That's fine.

22 A. The only written disciplines that I can
23 think of were a phone picture, cell phone picture
24 that was taken during an arrest and then an off-duty
25 incident where I was involved with a fight.

1 Q. Tell me about the cell phone picture
2 incident.

3 A. A gentleman was arrested for being
4 intoxicated and he was hiding in the trunk of a car.
5 He was arrested. I had his cell phone. It was
6 going off. I picked it up to open it. At some
7 point, I pushed the picture button instead of the
8 menu button. It took the picture. I hung it up,
9 set it down, put it in his property instead of
10 turning it off. He complained. I admitted that,
11 yes, I did mess with the cell phone. That was not
12 my intention to do anything with a picture of him.
13 I had a picture of him on the Digi-Mug and it was
14 his cell phone. I still received a written
15 reprimand for it.

16 Q. Did you take that picture of him in the
17 trunk?

18 A. No, in the booking room.

19 Q. In the booking room. Did you send that
20 picture to anybody?

21 A. Not that I'm aware of.

22 Q. And what was your punishment for that?

23 A. The written reprimand.

24 Q. You also mentioned an off-duty incident?

25 A. Correct.

1 Q. Can you tell me about that?

2 A. Yes. While out with some friends, two
3 other officers, a gentleman approached me and said
4 that I was the one who had arrested his girlfriend
5 for DUI. He then followed us when we left there,
6 because I felt uncomfortable, to another place and
7 brought more of his friends. And at that time, they
8 followed me outside when I tried to leave again and
9 a fight occurred.

10 Q. Okay. And by a fight occurred, were you
11 there at that establishment by yourself?

12 A. No, I was not.

13 Q. Who were you there with?

14 A. Officer Jim Burns from Lebanon and Brian
15 Hawk.

16 Q. Another Springboro officer?

17 A. Correct.

18 Q. And when you say a fight occurred, what
19 happened in that fight?

20 A. They followed me outside. A man, as I was
21 walking away, stripped his shirt off and charged at
22 me at which time I maced him and ran. They followed
23 me down the street, ended up tackling me and kicking
24 me in the head.

25 Q. Was the mace discharged in the bar or was

1 it outside?

2 A. Outside.

3 Q. And how were you disciplined for that?

4 A. I received five days off.

5 Q. Approximately, when did that incident
6 occur?

7 MR. WEISENFELDER: The fight?

8 MR. BRANNON: Yes.

9 A. I believe it was in 2004, maybe. No. No,
10 it wasn't, I'm mistaken. 2005. I don't have it in
11 front of me.

12 Q. How about the cell phone incident, when
13 did that occur?

14 A. Maybe two years before that. That's about
15 a rough estimate.

16 Q. You've had no military service; am I
17 correct in that?

18 A. Correct.

19 Q. Ever been involved in any prior lawsuits
20 or litigation?

21 A. Yes.

22 Q. Tell me about those.

23 A. The city was sued by the Center For
24 Bioethical Reform.

25 Q. Why would the city be sued by the Center

1 For Bioethical Reform?

2 MR. WEISENFELDER: Objection.

3 Q. To your knowledge?

4 A. To my knowledge why?

5 Q. Yeah, what was the suit about?

6 A. They were driving large box trucks. They
7 stopped traffic and were impeding traffic. I
8 investigated as to why they were impeding traffic.
9 They were wearing full level three threat body armor
10 and Kevlar helmets. I notified my supervisor who
11 notified the FBI. The FBI ordered us to stop and
12 detain them until they got there. We were charged
13 with detaining them for too long. That's what their
14 suit was.

15 Q. Was the city sued or were you sued
16 personally?

17 A. The city.

18 Q. And were you the officer that made the
19 stop on this vehicle?

20 A. The first time, yes.

21 MR. WEISENFELDER: For the record, I
22 think Nick was named as a defendant in the
23 lawsuit.

24 MR. BRANNON: Okay.

25 MR. WEISENFELDER: Am I correct?

1 THE WITNESS: Not personally.

2 MR. WEISENFELDER: But, I mean, you were
3 named as a defendant?

4 THE WITNESS: Yes.

5 BY MR. BRANNON:

6 Q. And just to clarify, you weren't named in
7 your individual capacity but in your official
8 capacity as a police officer?

9 MR. WEISENFELDER: If he knows. I'm not
10 sure he knows.

11 Q. If you know?

12 A. Correct.

13 MR. WEISENFELDER: There's a Sixth
14 Circuit -- I mean, it's all out there.

15 MR. BRANNON: I understand.

16 Q. Have you been involved in any other
17 lawsuits or litigation besides that one?

18 A. Being sued or --

19 Q. Being sued, suing somebody, anything where
20 you weren't testifying in a criminal context with
21 Springboro.

22 MR. WEISENFELDER: Or as a witness in
23 another matter. I believe your question is
24 where you've been a party in civil litigation.

25 A. The only other thing than that was I sued

1 the drunk driver who caused me to crash my police
2 cruiser.

3 Q. And when was that, approximately?

4 A. The accident was in 2005. I believe the
5 suit was completed sometime in 2007.

6 Q. Were you injured in that incident?

7 A. Yes.

8 Q. And is that matter currently resolved?

9 A. Yes, it is.

10 Q. Was your deposition taken in that
11 incident?

12 A. Yes.

13 Q. And can you tell me what court that was in
14 and --

15 A. Warren --

16 Q. -- possibly the case number?

17 A. Warren County Common Pleas. I do not know
18 the case number.

19 Q. Have you been involved in any other
20 lawsuits, litigation, as a party, that you can think
21 of besides those two incidents?

22 A. No, other than the pending one that I have
23 now.

24 MR. WEISENFELDER: Well, I don't want to
25 testify, but if there was a divorce, I don't

1 know if that was actually litigation or --

2 A. My divorce was very simple. I sued for
3 divorce and there was no contesting to it.

4 MR. WEISENFELDER: Just so the record is
5 clear.

6 MR. BRANNON: Sure.

7 Q. I take it you've had your deposition taken
8 before on multiple occasions; am I correct in that?

9 A. Yes, sir.

10 Q. Approximately how many times have you had
11 your deposition taken?

12 A. Four.

13 Q. Do you recall what those four incidents
14 involved?

15 A. The Center For Bioethical Reform, the
16 automobile accident, a case where the city was sued
17 by an individual. I may have forgotten to mention
18 that. I apologize. I didn't even remember that.
19 I'm not sure I was named in the Miracle Hurston
20 suit, but I did testify for that. I did provide a
21 deposition, and then this one.

22 Q. Let's talk about that one that you gave a
23 deposition in but you weren't named as a party in.
24 Was the City of Springboro named in a lawsuit or
25 tell me about this lawsuit.

1 MR. WEISENFELDER: Objection; to the
2 extent that you know.

3 MR. BRANNON: Sure.

4 MR. WEISENFELDER: If you know.

5 A. I'm not sure what the suit was for. My
6 testimony was to my involvement in the case, and
7 that was that another officer had stopped a person
8 for a traffic violation and I was there.

9 Q. Okay. Did this lawsuit involve claims
10 about unnecessary use of force?

11 A. No.

12 Q. What was the disagreement between the
13 officer that stopped and why this person sued the
14 city, do you know what the context was?

15 A. I believe the context, and please feel
16 free to correct me if I'm wrong, that there was no
17 reason to stop and detain that person, was their
18 claim.

19 Q. That was their gripe, you stopped me and
20 had no reason to stop me?

21 A. Correct.

22 Q. Do you recall the name of the individual
23 that was stopped?

24 A. Miracle Hurston.

25 Q. Hursten, S-T-E-N?

1 A. I think it's O-N.

2 Q. And what was the name of the officer that
3 was involved with that stop?

4 A. Terry Dunkel.

5 Q. And is Terry Dunkel an officer with
6 Springboro then currently?

7 A. Yes.

8 Q. Do you know how that litigation was
9 resolved?

10 A. I believe it went to a jury and the jury
11 found that Terry Dunkel and the police department
12 not guilty.

13 Q. You mentioned that you received discipline
14 as a police officer on two occasions with written
15 discipline. Were there other occasions where you
16 were disciplined as well?

17 MR. WEISENFELDER: Objection. Go ahead.

18 A. Verbal counseling.

19 Q. Tell me about what that verbal counseling
20 included and the events surrounding that; on how
21 many occasions?

22 MR. WEISENFELDER: Continuing objection
23 to the line of questioning.

24 A. We would be verbally counseled for any
25 number of things, not having your microphone clipped

1 on on a traffic stop where nothing unusual occurred,
2 if that had happened before. If your camera was not
3 functioning and you weren't aware of it at the time
4 or it ceased to function, you could have been
5 verbally counseled for that. If you recorded at any
6 time on accident and wasted footage, I was verbally
7 counseled for that. That's about the extent of it.

8 Q. Were you ever verbally counseled for
9 anything having to do with your use of a canine or
10 anything involving your canine?

11 MR. WEISENFELDER: Objection. Go ahead.

12 A. I was questioned during the Kerns,
13 Mr. Kerns, after that pursuit, I was questioned.

14 MR. WEISENFELDER: The question was, were
15 you --

16 A. I don't believe I was counseled. No, not
17 disciplined in any way, shape or form.

18 Q. Which incidents were you counseled for
19 involving the canine then?

20 A. None.

21 Q. So in your function as a canine officer,
22 you never received any verbal counseling, discipline
23 or any other type of discipline, reprimand or
24 anything like that, concerning your use of the
25 canine?

1 A. No.

2 Q. You mentioned the term questioned. Were
3 you questioned regarding your use of the canine on
4 prior incidents or on incidents involving the
5 canine?

6 A. Yes.

7 Q. On how many occasions?

8 A. Three.

9 Q. Which three canine incidents were you
10 questioned about?

11 A. Campbell, Kerns and Gemperline.

12 Q. Who was the one that questioned you
13 regarding Mr. Campbell?

14 A. Initially Sergeant Bentley and secondly
15 Lieutenant Parker.

16 Q. Who was it that questioned you regarding
17 the Kerns incident?

18 A. Lieutenant Wheeler.

19 Q. Anybody else?

20 A. No.

21 Q. How about regarding the Gemperline
22 incident?

23 A. Lieutenant Parker and Lieutenant Wheeler.

24 Q. Did you review any documents, statements,
25 anything like that, prior to your deposition here

1 today?

2 A. Yes.

3 Q. What was it that you reviewed?

4 A. The case file on Mr. Campbell and the case
5 file on Ms. Gemperline.

6 Q. And please tell me about what's in a case
7 file, what would be in the case file for
8 Mr. Campbell and Ms. Gemperline?

9 A. The initial narrative report form, my
10 usage form, the use of force --

11 MR. BRANNON: My pen just ran out of ink.

12 I apologize. if we can go off.

13 (OFF THE RECORD)

14 BY MR. BRANNON:

15 Q. I apologize for that. You were telling me
16 about the case file, what was contained in the case
17 file on Mr. Campbell and Ms. Gemperline.

18 A. The initial report by the officer. It's
19 referred to as NIBRS, N-I-B-R-S, the use of force
20 report, my canine usage report would be what would
21 typically be in that.

22 Q. Okay. Did you review any other documents,
23 besides those documents, in preparation for today?

24 A. The policy.

25 Q. And which policy are you referring to?

1 A. The canine usage policy.

2 Q. I take it that's one adopted by the City
3 of Springboro. Did the Springboro Police Department
4 adopt a canine usage policy at any point in time
5 that you're aware of?

6 A. Yes.

7 Q. Was that the policy that you reviewed?

8 A. Yes.

9 Q. When was that policy adopted by the City
10 of Springboro, to your knowledge?

11 A. The policy that I worked on was provided
12 to the Chief by me and accepted the first day that I
13 came back from dog training school.

14 Q. So if I'm understanding you correctly, you
15 came back from dog training school, somebody had
16 given you a policy, you gave it to your chief, and
17 that's the policy then that Springboro adopted?

18 A. Not exactly that way. Before graduating
19 from dog school, before completing certifications,
20 we had had discussions that we needed to have a
21 policy and one needed to be drawn up.

22 Q. Who is we?

23 A. The class and the instructors. I brought
24 it to the Chief's attention and the Chief told me to
25 prepare him something. So I received a policy,

1 which was the International Association of Chiefs of
2 Police Accepted Canine Policy, presented that to the
3 Chief and that is what we used.

4 Q. When would that policy have gone into
5 effect, then, for Springboro?

6 A. The day that I handed it to the Chief.
7 I'm sorry, the day that he told me that this was
8 what we would work with. I don't remember the exact
9 date.

10 Q. But would that have been before you and
11 Spike went out on the road then?

12 A. Yes.

13 (Deposition Exhibit S17 was marked for
14 identification.)

15 Q. Mr. Clark, I'm going to hand you a
16 document.

17 MR. WEISENFELDER: Do you have copies?

18 MR. BRANNON: I don't have copies of that
19 particular one.

20 MR. WEISENFELDER: Are you going to
21 ask -- other than identifying it?

22 MR. BRANNON: I'm just going to have him
23 identify that document.

24 MR. WEISENFELDER: If we get into
25 questions, I'm going to want a copy.

1 MR. BRANNON: Sure. And I have copies of
2 everything else.

3 MR. WEISENFELDER: Okay. But, I mean, if
4 that's all you're doing is asking him to
5 identify it, I don't want to stop.

6 BY MR. BRANNON:

7 Q. Do you recognize that document before you
8 that's been marked as S17?

9 A. Yes.

10 Q. Can you tell me what that document is?

11 A. The International Association of Chiefs of
12 Police, Law Enforcement Canine Model Policy.

13 Q. Is that the one you took back to your
14 chief from dog training school?

15 A. Yes, it is.

16 Q. And is that the one that Springboro then
17 adopted for their policy?

18 A. Yes.

19 Q. How long was that policy in effect for at
20 Springboro, to your knowledge?

21 A. The entire time that I worked with Spike,
22 from my first certification date until the end of
23 the canine program.

24 Q. And I noticed on that document previously
25 that it looked like something printed off the

1 Internet. Do you know where that document came from
2 originally?

3 A. This one?

4 Q. Correct.

5 A. From Terry Fleck's website.

6 Q. Can you tell me who Terry Fleck is?

7 A. Terry Fleck is an expert witness in the
8 canine field. He handles the canine legal updates.

9 Q. Where is Terry Fleck located at?

10 A. I don't know.

11 Q. Have you ever spoken with Terry Fleck?

12 A. No, I have not.

13 Q. Have you ever been provided any training
14 from Terry Fleck?

15 A. No, I have not.

16 Q. Were you the one that pulled this document
17 off of Terry Fleck's website?

18 A. Yes, I was.

19 Q. How was it that you chose this particular
20 website and this policy that you found on this
21 website?

22 A. I was advised by my trainers that Terry
23 Fleck was the foremost expert in canine case law in
24 the United States. I didn't want to use a -- I did
25 not want to present the Chief with a policy that was

1 state specific.

2 Q. Now, the International Association of
3 Chiefs of Police, did you ever check with them for
4 what their model canine policy was?

5 A. It's right here.

6 Q. Did you ever check with the International
7 Association of Chiefs of Police for their canine
8 policy or did you just find this off of Terry
9 Fleck's website and assume it was the same one
10 issued by the International Association of --

11 A. Just off Terry Fleck.

12 Q. Okay. But you never confirmed that that
13 was the current version with the International
14 Association of Chiefs of Police?

15 A. No, I did not.

16 Q. Do you know how long that particular
17 version of the International Association of Chiefs
18 of Police policy has been out or when it first
19 issued?

20 A. I do not.

21 Q. Do you know if it's ever changed during
22 your entire career with the Springboro Police
23 Department?

24 A. Not that I'm aware of.

25 Q. To your knowledge, did anybody ever go

1 back and check and see if it ever changed?

2 A. I had pulled it off several times and it
3 had not changed.

4 Q. Where did you pull it off of several
5 times?

6 A. The same time, Terry Fleck's site.

7 Q. Okay. So you kept going back to Terry
8 Fleck's website. Had you ever gone to the
9 International Association of Chiefs of Police
10 website?

11 A. No.

12 Q. So for all you know, this same document
13 was the same one that was posted originally on Terry
14 Fleck's website?

15 A. Yes.

16 Q. You don't know if Terry Fleck ever updated
17 that website, correct?

18 A. I don't know.

19 Q. Did you review any video or audio
20 recordings or diagrams or any photos prior to today?

21 A. Yes.

22 Q. Which of those did you review?

23 A. The video of the incident involving
24 Ms. Gemperline and two diagrams that were -- one was
25 a diagram, the approximate area involving the

1 incident with Mr. Campbell and another involving
2 Ms. Gemperline.

3 Q. Are you aware of any video or audio
4 recordings involving the Campbell incident?

5 A. Yes.

6 Q. Which ones are you aware of?

7 A. The in-car cruiser cam and audio.

8 Q. Do you know if that cruiser cam and audio
9 still exists for the Campbell incident?

10 A. I don't know.

11 Q. Do you know if they still exist for the
12 Gemperline incident?

13 A. Yes.

14 MR. BRANNON: I'd make a request for the
15 in-car video camera of the Campbell incident
16 if that still exists and is available.

17 MR. WEISENFELDER: That's fine. And all
18 I ask is that when we're finished, just put it
19 in writing to me.

20 MR. BRANNON: Sure. And if I could, have
21 the court reporter start running me a separate
22 page for discovery requests, and if we could
23 put on that separate page the request for the
24 in-car video camera concerning the Campbell
25 incident.

1 BY MR. BRANNON:

2 Q. When was the last time that you were aware
3 of the existence of the in-car video camera
4 regarding the Campbell incident?

5 A. I listened to it the next day.

6 Q. Do you know if anybody else has listened
7 to it since then?

8 A. At the time Officer Anderkin listened to
9 it during that time period going up to the hearing
10 in Warren County Court. So between the time of the
11 incident and the initial hearing in Warren County
12 Court, it would have been that time period. I'm not
13 sure if anyone's listened to it after that.

14 Q. Do you know where that tape or CD may be
15 located now?

16 A. No, sir, that's not my responsibility.

17 Q. Would the prosecutor have been given a
18 copy of this tape or CD, to your knowledge?

19 A. That would be a question better posed to
20 Officer Anderkin.

21 Q. Did you make the audio/video recording of
22 that incident or did Officer Anderkin?

23 A. Both of our mics and cameras were on.

24 Q. So there were actually two recordings of
25 that incident?

1 A. I believe so, yes.

2 Q. Are you familiar with any use of force
3 model continuum, are you familiar with that term?

4 A. Yes.

5 Q. To your knowledge, what is that term
6 defined?

7 A. Defined?

8 Q. Yeah, what does that mean?

9 A. It's the use of force policy, the
10 continuum, the level of force in situations.

11 Q. Okay. Does Springboro have one, to your
12 knowledge, have they adopted a use of force policy?

13 A. At that time I was employed there they
14 did, yes.

15 Q. Do you know if that policy that was
16 adopted by Springboro ever included anything having
17 to do with canine use of force?

18 A. Not to my knowledge.

19 Q. So is it your belief, on the use of force
20 policy adopted by Springboro, that a canine use of
21 force is not included in that policy?

22 A. Not that I can remember.

23 Q. Can you give me some examples of what is
24 included on that use of force policy?

25 MR. WEISENFELDER: Objection. You're

1 referring to?

2 MR. BRANNON: The one adopted by
3 Springboro during the 2007/2008 time frame.

4 A. Verbal, chemical irritants, physical
5 restraints, key locks, holds, asp baton, and then I
6 believe it graduates to firearms, but that was
7 before the implementation of Taser and things of
8 that nature that I don't know if it was changed or
9 not.

10 Q. So is it your understanding, then, that
11 the use of firearms would be the highest level of
12 force and that the lowest level would be a verbal
13 command?

14 A. Yes.

15 Q. Okay. And then everything else falls
16 somewhere in between, meaning a Taser, a chemical
17 irritant, an asp, things of that nature, correct?

18 A. Correct.

19 Q. Did anybody at the City of Springboro ever
20 talk to you or discuss with you where a canine fell
21 within that use of force model somewhere between
22 firearm and verbal, did they tell you what a canine
23 use of force would approximate to?

24 MR. WEISENFELDER: I'm going to object to
25 the form of the question. Go ahead and

1 answer, if you can.

2 A. I was not told where the canine would be
3 in the use of force. I was asked on several
4 occasions where I thought it should be, and that was
5 the extent of my asking about the canine and the use
6 of force.

7 Q. Okay. Who asked you where you thought it
8 should be?

9 A. Lieutenant Wheeler.

10 Q. Okay. And who is Lieutenant Wheeler, is
11 he the operational's commander? Who is he in the
12 hierarchy of the Springboro Police Department?

13 MR. WEISENFELDER: Then or now?

14 MR. BRANNON: During the 2007/2008 time
15 frame.

16 A. I don't remember what date he was --

17 Q. Let's try it a different way. When he
18 asked you those questions, where was he in the --

19 A. He was the operations commander.

20 Q. And approximately when was it that he
21 asked you these questions?

22 A. Early 2006.

23 Q. Was there any event that occurred that
24 caused him to ask you these questions?

25 A. He was re-evaluating the use of force

1 policy. I remember him asking me -- or telling me
2 that he was going through the policies. That was
3 apparently something that he was doing, some
4 project, and he asked my opinion on where I thought
5 the canine should lie in the use of force policy.

6 Q. And what opinion did you give Lieutenant
7 Wheeler about where the canine falls in the use of
8 force policy?

9 A. That it should not be in there at all.

10 Q. And why is that?

11 A. The canine does not dictate the use of
12 force, the suspect does.

13 Q. Can you explain that to me?

14 A. The suspect is the deciding factor in
15 their behavior and their actions as to whether the
16 use of force occurs, unlike a typical use of force
17 weapon such as mace, a baton, a gun, or a Taser that
18 is activated by the officer and used as a weapon. A
19 dog is an animal, a detecting tool, not a weapon.

20 Q. Okay. So if I'm understanding you
21 correctly, you believe that the canine is not --
22 when a canine is utilized, that that is not a use of
23 force?

24 A. A use of force report should be made, but
25 it should not be placed in the use of force

1 continuum, is my opinion.

2 Q. Okay. So it's your opinion that the
3 deployment of a canine or the use of a canine -- is
4 there any difference in the term use and deployment
5 of canine, to your knowledge, or are those one in
6 the same?

7 A. If you're getting specific, a deployment
8 could be anytime he steps out of the car, whether
9 he's used or not. A deployment would be actually
10 referred to as being utilized in his function, his
11 capacity.

12 Q. Okay. Whether or not a canine is used or
13 deployed, either way, in your opinion, that does not
14 constitute a use of force; am I correct?

15 A. The difference being that if the dog is
16 deployed, it is not always a use of force. Whereas
17 if an asp baton is used on a person, it's always a
18 use of force. If someone is sprayed with OC, it is
19 always a use of force. The dog can be deployed and
20 there may or may not be a use of force dependent
21 upon the suspect's actions.

22 Q. Okay. You sort of qualified that,
23 depending on a suspect's actions?

24 A. Correct.

25 Q. Does a suspect's actions always determine

1 what use of force may be necessary in a given
2 situation?

3 A. Can you say that again?

4 Q. You mentioned the suspect's actions
5 determine whether or not there's a use of force for
6 a canine; am I correct in that?

7 A. Correct.

8 Q. How is a suspect's actions -- I'm trying
9 to understand how that's different with a canine,
10 deploying a canine, as opposed to a suspect's
11 actions in utilizing pepper spray, for example?

12 A. Once pepper spray is sprayed, it's
13 sprayed. A dog does not have to, once it has been
14 deployed, actually make physical apprehension of
15 someone.

16 Q. Okay.

17 A. If pepper spray's deployed, it's deployed.

18 Q. And is there a difference if the dog is
19 utilized as opposed to deployed under the same
20 question?

21 A. There would be no difference unless
22 there's a physical apprehension.

23 Q. Either way, though, it's your
24 understanding that a canine does not constitute a
25 use of force, correct?

1 A. That is not what I said.

2 Q. Okay. Correct me, then.

3 A. A simple deployment of the dog and usage
4 of the dog does not constitute use of force. The
5 use of force comes when the suspect fails to comply
6 or resist and is actually physically apprehended by
7 the canine.

8 Q. So unless there's -- it's your
9 understanding, then, there's no use of force with a
10 canine unless the canine physically apprehends or
11 attacks or bites somebody, correct?

12 A. That is what I was trained, yes, physical
13 apprehension.

14 Q. But until then, any use of the canine,
15 until it makes physical contact, does not constitute
16 a use of force?

17 A. Correct.

18 Q. And it was your recommendation, then, to
19 Lieutenant Wheeler that a canine not be placed on
20 the use of force continuum adopted by the City of
21 Springboro, correct?

22 A. Correct.

23 Q. And it was also your opinion to Lieutenant
24 Wheeler in your recommendation not to include the
25 canine in the use of force policy for the City of

1 Springboro, correct?

2 A. In the use of force continuum that the
3 city used, yes.

4 Q. Okay. Did you recommend that they place
5 the canine in the use of force policy that he was
6 reviewing at that time that you had this
7 conversation with Lieutenant Wheeler?

8 A. He asked where I thought it lay -- where I
9 thought it lied within that, and I said that I
10 believe it did not belong anywhere in there.

11 (Deposition Exhibit S2 was marked for
12 identification.)

13 Q. I'm going to go ahead and hand you a
14 document that we have marked as S2. Are you ready?

15 A. Yes.

16 Q. Do you recognize that document?

17 A. Yes.

18 Q. Can you tell me what that document is?

19 A. It's a use of force policy. It looks like
20 it's out of the policy book for the Springboro
21 Division of Police.

22 Q. So it looks like a copy of the use of
23 force policy for Springboro, correct?

24 A. Correct.

25 Q. Do you know whether or not this was a use

1 of force policy that was in effect at the time of
2 the Campbell and Gemperline bite incidents?

3 A. I do not.

4 Q. Do you know if it's ever been changed from
5 the time period of 2006 to current?

6 A. I do not.

7 Q. Do you know if this was the use of force
8 policy in effect at the time that you were operating
9 with your canine Spike?

10 A. I do not.

11 Q. Have you ever reviewed this use of force
12 policy prior to today?

13 A. I have no way to tell. I can tell you
14 that I reviewed the use of force policy when I was
15 in field training.

16 Q. Okay. And would that have been the last
17 time that you would have reviewed the Springboro use
18 of force policy?

19 A. Yes.

20 Q. And when you were in training, is that
21 when you just became an officer with Springboro?

22 A. Yes.

23 Q. Back in the year 2000, approximately?

24 A. Yes.

25 Q. Were you provided with a copy of the

1 policy at that point in time?

2 A. It was in the policy book, but I had not
3 had my individual own policy, no.

4 Q. Were you ever provided with your own
5 individual policy book?

6 A. No.

7 Q. Did any supervisor at Springboro ever
8 discuss with you the use of force policy for
9 Springboro besides Lieutenant Wheeler?

10 A. When I was in field training.

11 Q. And who would that have been?

12 A. At the time, Sergeant Hughes.

13 Q. And what did you discuss with Sergeant
14 Hughes?

15 A. During field training, we discussed the
16 majority of the policies.

17 Q. He just sort of reviewed them with you, is
18 that safe to say?

19 A. Yes.

20 Q. Do you have an opinion, as we sit here
21 today, whether or not a canine belongs on a use of
22 force policy for the Springboro Police Department?

23 MR. WEISENFELDER: Objection. Go ahead
24 and answer.

25 A. In my opinion, no, it does not for the

1 City of Springboro.

2 Q. And would that be for the same reasons
3 that we discussed earlier?

4 A. Yes.

5 Q. I'd like to talk to you now about how you
6 became a canine officer for the City of Springboro?

7 MR. WEISENFELDER: Are you sort of
8 switching topics here for a minute?

9 MR. BRANNON: A little bit.

10 MR. WEISENFELDER: Good time to take a
11 break?

12 MR. BRANNON: I think so.

13 (OFF THE RECORD)

14 BY MR. BRANNON:

15 Q. You ready, Officer, Mr. Clark?

16 A. Yeah.

17 Q. Before we took a break, I was wanting to
18 know your background with dogs and canines. Can you
19 tell me prior to joining the Springboro Police
20 Department what your experience was with dogs,
21 canines, animals?

22 A. Just owned dogs all my life since being
23 little.

24 Q. What type of dogs have you owned?

25 A. I've owned Dobermans, Golden Retrievers,

1 German Shepherds and various mutts. That's about
2 it.

3 Q. Have you always had a dog growing up?

4 A. Yes.

5 Q. And as an adult, have you always had a
6 dog?

7 A. Yes.

8 Q. The dogs that you've had prior to getting
9 police canine Spike, have they all been family
10 household pets?

11 A. Yes.

12 Q. Have any of them ever been trained to do
13 anything, such as hunting, teach them to do tricks,
14 anything like that?

15 A. My Golden Retriever would roll over and
16 play dead.

17 Q. Okay. I take it you taught him that?

18 A. Yes, I did.

19 Q. Did you ever do any other training,
20 teaching, anything like that, with any of your dogs?

21 A. Just puppy camp I'd been to a couple of
22 times and then they closed that down.

23 Q. What's puppy camp, basic obedience school
24 where you teach them to sit, hand you their paw,
25 something like that?

1 A. Correct.

2 Q. Tell me about how the Springboro Police
3 Department decided to start a canine department.
4 Whose idea was this?

5 A. Originally it was Officer Bob Marchiny's
6 idea. He had approached the previous chief who did
7 not support it, budgetary at the time. I then
8 reasked to implement the program and the Chief
9 agreed to it.

10 Q. And this would be Chief Kruithoff?

11 A. Kruithoff.

12 Q. You may have to correct me on that a few
13 times. Hopefully I'll get it straight before I take
14 his deposition. Approximately during what period of
15 time, then, did you -- you were the first one to
16 approach Chief Kruithoff about a canine program?

17 A. As far as I'm aware.

18 Q. To your knowledge, had Springboro ever had
19 a canine unit or program prior to this one?

20 A. No.

21 Q. Had any of the other officers or
22 lieutenants or the Chief, had they ever had any
23 prior experience with a canine program prior to this
24 one?

25 A. Yes.

1 Q. Okay. Who?

2 A. Lieutenant Parker.

3 Q. To your knowledge, what was Lieutenant
4 Parker's canine experience prior to this one?

5 A. He was a handler, I believe, at Clearcreek
6 Township.

7 MR. WEISENFELDER: Where?

8 A. Clearcreek Township.

9 Q. Do you know how long he was a handler at
10 Clearcreek Township with a canine?

11 A. No, sir.

12 Q. When did Lieutenant Parker, to your
13 knowledge, come on board with the Springboro Police
14 Department?

15 A. Honestly, I don't know.

16 Q. Was he there when you got there?

17 A. Yes, he was.

18 Q. Did you ever know Lieutenant Parker to
19 ever have a dog?

20 A. No.

21 Q. Did he get to keep his canine that he
22 handled for Clearcreek Township?

23 A. I don't know.

24 Q. Did Lieutenant Parker ever assist you with
25 any training, or anything like that, with your

1 canine Spike?

2 A. No.

3 Q. Let's get back to how the Springboro
4 Police Department started this canine unit with
5 Spike. My understanding, you approached Chief
6 Kruithoff about starting the unit?

7 A. Yes.

8 Q. Tell me about that conversation with the
9 Chief.

10 A. I approached the Chief, talked to him
11 about it, my interest in doing it. The Chief told
12 me he would approach city council and ask them.

13 Q. And why did you have an interest in
14 starting a canine unit for Springboro?

15 A. I had utilized the City of Franklin
16 several times and our department had utilized
17 outside agency's canines multiple times, and I felt
18 that it was something that we used enough that we
19 could use our own.

20 Q. What was Springboro utilizing other
21 departments' canines for, both in your personal
22 experience with Franklin and the other ones you know
23 about?

24 A. Tracking and narcotics work.

25 Q. And give me a time frame here of when this

1 conversation would have taken place with your chief.

2 A. Sometime in 2004.

3 Q. I take it at some point your chief
4 approached city council?

5 A. Yes.

6 Q. Or the city manager?

7 A. Council.

8 Q. Okay. Tell me about how the canine
9 program came to be from there then, who was involved
10 in that?

11 A. The Chief told me that council had
12 approved it; however, they would not approve the
13 funding, they would only -- I'm sorry, they would
14 only approve a portion of the funding. They would
15 not pay for, I believe it -- it was either the dog
16 or the training, one or the other, I couldn't tell
17 you which one, but they would approve the rest of
18 it. And that he would post the position. Everyone
19 had the opportunity to apply for it. Whoever was
20 awarded it, they would have to then raise the money
21 throughout the community and the funds to fund the
22 remainder of what city council would not fund.

23 Q. Okay. And how many officers, to your
24 knowledge, applied for the position?

25 A. I have no idea.

1 Q. But you got it?

2 A. Yes, I did.

3 Q. Do you know what, if anything, the Chief
4 would have done to get this approved by city
5 council? Did he just say, hey, I think a canine
6 unit is a good idea, are you guys on board with it,
7 is it a pretty informal thing or were there votes
8 and public hearings or anything like that, to your
9 knowledge?

10 A. I don't know.

11 Q. After you were told that you would be the
12 canine officer, what did you do to start the program
13 then?

14 A. I raised money through certain businesses
15 and also received a grant from -- a grant donation
16 from Milk-Bone Corporation.

17 Q. The dog biscuit people?

18 A. Correct.

19 Q. And by donations, were these from
20 individuals, private businesses?

21 A. Both.

22 Q. Do you recall approximately how much money
23 you had to raise to start this program?

24 A. I don't remember how much I had to raise.
25 I believe it was in the neighborhood of 8,000. I

1 raised 12,500.

2 Q. Do you know what types of budgetary
3 allotments were made for the additional training
4 past the initial training at this point in time?
5 Was there any projected costs of keeping this dog
6 and what additional training would cost and those
7 sorts of things?

8 A. Not that was made to me, not that I knew
9 of.

10 Q. Were you in charge of any of the budgets
11 regarding the canine program or not?

12 A. Just the initial 12,500 that I raised.

13 Q. Okay. Do you have any additional
14 knowledge about the budgeting for the dog?

15 A. I do not.

16 Q. After you raised the money, what happened
17 next?

18 A. The Chief told me to pick out a dog
19 training school, a place to get the dog.

20 Q. And you said a dog training school, a
21 place to get the dog. Where did you choose to get
22 the dog from?

23 A. Lynnwoods Kennels.

24 Q. How did you choose Lynnwoods Kennels?

25 A. I was told by a trainer and an officer

1 from Franklin and several members of the Miami
2 Valley Police Canine Association that that was the
3 place to go.

4 Q. Okay. And who did you deal with at
5 Lynnwoods Kennels?

6 A. Master Trainer Brian Woods and Rob, Robert
7 Hickman.

8 Q. And what did Lynnwoods Kennels do for you?

9 A. They provided the imported dog and the
10 training.

11 Q. You mentioned that Brian Woods held a
12 classification as a master trainer?

13 A. Correct.

14 Q. How do you get that status as a master
15 trainer?

16 A. You have to be approved by North American
17 Police Work Dog Association, and I believe it's in
18 terms of the number of hours you have training.

19 Q. So they were a one-stop shop thing, you
20 buy your dog there and they train you there?

21 A. Correct.

22 Q. Tell me about the dog that was selected.
23 Who was responsible for selecting the dog?

24 A. Brian Woods.

25 Q. And how would Brian Woods determine what

1 dog would fit your needs?

2 A. I'm not sure how he selected who got what
3 dog. There were six people in my class and he chose
4 the dogs for each individual person before they made
5 it to class.

6 Q. Okay. When you were sent to Lynnwoods
7 Kennels by the Springboro Police Department, or sent
8 up there, did they give you any instructions on what
9 type of dog to get?

10 A. No, they did not.

11 Q. Was there any criteria for the kind of dog
12 that they wanted for their department?

13 A. No, there was not.

14 Q. So what type of dog were you going to get
15 or were you told to get, a narcotics dog, a tracking
16 dog, a public relations dog? I don't know how many
17 types of dogs there are, but I think you understand
18 my question.

19 A. I'm sorry, I thought you were referring to
20 the breed of dog. No, I was instructed to get a
21 dual-purpose dog, narcotics and patrol work.

22 Q. And what would a dual-purpose dog be
23 trained to do?

24 A. Detect the four major odors of narcotics
25 and patrol, also patrol work, which entails

1 tracking, building searches, area searches, criminal
2 apprehension and articles.

3 Q. Okay. Did you have that discussion with
4 your chief before you went up to get the dog?

5 A. Yes, I did.

6 Q. So the Chief says, if we're going to do
7 this, I want a dual-purpose dog?

8 A. Yes, sir.

9 Q. Was the dog to be trained in any type of
10 specific manner for Springboro or not?

11 A. No.

12 Q. You were told a dual-purpose canine?

13 A. Yes.

14 Q. What was the breed of the dog that Brian
15 Woods gave to you?

16 A. A Belgian Malinois.

17 Q. And is that like a German Shepherd?

18 A. It's similar.

19 Q. Okay. How would you describe a Belgian
20 Malinois?

21 A. Shorter, actually smaller in stature than
22 your typical German Shepherd, a little faster, a
23 higher -- typically higher drive rate and more of a
24 herding animal.

25 Q. Okay. And by a higher drive rate, what do

1 you mean by that?

2 A. More desire to work, to herd.

3 Q. And is this dog known for anything in
4 particular, being good at anything in particular,
5 such as is this a better tracking dog than, say, a
6 Bloodhound, is it a better drug dog than a Labrador
7 Retriever?

8 A. No.

9 Q. Was this dog particularly good at any one
10 area?

11 A. The breed?

12 Q. This breed, yes. Are they known for being
13 particularly good at any one thing?

14 A. No.

15 Q. Are they known for being aggressive?

16 A. No.

17 Q. Are they known for being obedient?

18 A. Yes.

19 Q. Are they known for anything else?

20 A. Yes.

21 Q. What else are they known for?

22 A. Lower instance in rate of allergies and
23 cancers and hip dysplasia than the German Shepherd.

24 Q. A healthier dog than a German Shepherd?

25 A. Correct.

1 Q. Who named this particular dog?

2 A. I have no idea.

3 Q. The dog that we're here talking about
4 today, its name is Spike, correct?

5 A. Yes, it is.

6 Q. So Brian Woods said, here's Spike, this is
7 your dog?

8 A. Correct.

9 Q. Did you know anything about Spike before
10 you were given him by Brian Woods?

11 A. Just that he had a little book and x-ray
12 that came with him. The book was written in Dutch
13 and it was his vaccine record and it had the name
14 Spike on it.

15 Q. Was this dog imported then?

16 A. Yes.

17 Q. Where was he imported from?

18 A. I don't know.

19 Q. Someplace where they speak Dutch, I take
20 it?

21 A. Correct.

22 Q. Tell me about what type of training
23 program Brian Woods provided to you.

24 A. It was five days a week, just all phases
25 of the dog training. It was two weeks longer in

1 duration than the single-purpose narcotic dog.

2 Q. Okay. So he sold two kinds of dogs, one
3 was a narcotics-only dog and then the other was a
4 dual-purpose dog; am I correct?

5 A. Three kinds.

6 Q. Three kinds. What was the third kind he
7 sold?

8 A. Patrol only.

9 Q. Okay. So you have narcotics, dual-purpose
10 and patrol?

11 A. Correct.

12 Q. You said that the training was five days a
13 week. For how many weeks?

14 A. I believe it was six weeks.

15 Q. And in those six weeks, can you tell me,
16 was Spike with you 24 hours a day, seven days a
17 week?

18 A. No, he slept in the kennels. I slept in
19 the bunkhouse.

20 Q. And what did you guys do for six weeks
21 then?

22 A. Obedience, drug work was -- obedience and
23 drug work were the first month, first four weeks.
24 That is all that we did. The last two weeks
25 consisted of patrol work.

1 Q. During the first four weeks during the
2 obedience and drug work weeks, did you have any
3 problems or issues with Spike?

4 A. No, I did not.

5 Q. How about during the second week, during
6 the patrol work, did you have any problems or issues
7 with Spike?

8 A. The last two weeks?

9 Q. Yes.

10 A. No.

11 Q. What did this training course provide you,
12 did they give you a certificate at the end? What do
13 you get out of this?

14 A. A certificate.

15 Q. Okay. And what type of certificate?

16 A. A certificate that stated that you had
17 completed the number of hours of training described
18 by the State of Ohio, and that was particular to
19 whether you were dual purpose or just the narcotics.

20 Q. Okay. And were there any grades given in
21 this course?

22 A. No.

23 Q. It was just a pass/fail?

24 A. I don't know that anyone failed you. No,
25 it was neither.

1 Q. Were you just there the number of hours
2 required and then that allowed you to get your
3 certificate?

4 A. Yes.

5 Q. Do you know what the requirements are for,
6 or were at that time, for a canine unit to be in
7 compliance with the rules under the State of Ohio?

8 A. There was a number of hours that had to be
9 completed of initial training and then you had to
10 pass the state certification.

11 Q. And was the work at Lynnwoods Kennels just
12 to get the number of hours that you needed then?

13 A. Yes.

14 Q. And tell me about the certification
15 process to that.

16 A. The state certification?

17 Q. Correct.

18 A. The state certification is administered by
19 a state examiner, someone who is recognized by the
20 state, to do that, administer that. They oversee
21 it, that is a pass/fail, and then they report that
22 back to the head of whoever that was at the time,
23 that office.

24 Q. Okay. And is the certification, is this a
25 written examination, an examination on oral

1 questions, a practical examination, what type of
2 examination did they conduct?

3 A. Practical.

4 Q. Were you ever required to take any tests,
5 any written work, anything like that, as part of
6 this training for Spike?

7 A. For Lynnwoods I had to complete a final
8 test, yes.

9 Q. And was that final test, was that a
10 written test?

11 A. Yes.

12 Q. And what was your score on that test?

13 A. I do not know.

14 Q. Did they grade the test?

15 A. Yes.

16 Q. Did they ever tell you your grade on that
17 test?

18 A. No, they did not.

19 Q. They just said, you're okay, you're not
20 okay?

21 A. You either passed or failed.

22 Q. How many dogs had there been in that
23 Springboro canine unit?

24 A. Just one.

25 Q. Just one. And that's you and Spike. You

1 were the only canine unit that Springboro has ever
2 had now or currently has?

3 A. To my knowledge, yes.

4 Q. How old was Spike when you got Spike?

5 A. Thirteen months.

6 Q. How old was Spike when Spike first went
7 into the field?

8 A. Would have been six weeks older than 13
9 months, so...

10 Q. So if I'm understanding you correctly,
11 right after you went up to Lynnwoods Kennels for
12 about six weeks, would you have immediately then
13 taken the state certification?

14 A. After the six weeks.

15 Q. After the six weeks. And then right after
16 that, you and Spike were deployed in the field?

17 A. Correct.

18 Q. There was no delay between your
19 certification and deployment in the field?

20 A. No.

21 Q. Were you ever asked by any superior to
22 demonstrate Spike prior to deployment in the field?

23 A. Yes.

24 Q. Who were you asked to demonstrate Spike
25 for prior to deployment in the field?

1 A. Lieutenant Wheeler, the chief of police
2 and the city manager.

3 Q. And what did you do? What were you asked
4 to demonstrate for them?

5 A. On separate dates, the first time I
6 demonstrated drug work, detection of all four
7 narcotics, major narcotics, and the second date I
8 did an apprehension and call off.

9 Q. You mentioned that you demonstrated the
10 dog for the city manager at that point in time.
11 Prior to that, had you known of the city manager's
12 involvement at all with the canine unit?

13 A. I did not know.

14 Q. And what was her purpose in being there
15 for the canine demonstrations at that point in time?

16 MR. WEISENFELDER: Objection.

17 Q. If you know?

18 A. I don't know.

19 Q. Did you ever demonstrate any other
20 functions of the dog prior to deployment in the
21 field?

22 A. No.

23 Q. Can you describe for me what an
24 apprehension and call off is?

25 A. An apprehension and call off in that case

1 was a decoy, which is a person in a bite suit. The
2 decoy is running away. The dog is sent on what's
3 called, or determined to be a straight runaway bite.
4 The dog apprehends the person, stops. The dog at
5 that point, after the person stops running, is
6 called off.

7 Q. I take it at Lynnwoods Kennels you were
8 trained to give certain commands to the dog that the
9 dog was supposed to follow, correct?

10 A. Correct.

11 Q. What are the commands, for example, doing
12 a track? How would you command the dog to do a
13 track?

14 A. The word?

15 Q. Sure. You tell me what you do to make
16 this dog track.

17 A. To make that particular dog track, I would
18 get him excited and I would hook him up in his
19 harness and I would tell him to sook it.

20 Q. And I take it sook it is a term in another
21 language that's used?

22 A. Correct.

23 Q. What language is that?

24 A. I believe that's German.

25 Q. And how would you get the dog excited?

1 A. Speaking to him in high, happy tones, like
2 a baby.

3 Q. And, for example, how would you then
4 command a dog to do an apprehension, what would you
5 do in that circumstance?

6 A. The word?

7 Q. Just the same process that you described
8 for a track. Would you get him excited first, would
9 you just give him a word and he'd go, what would he
10 do?

11 A. That would depend on the circumstance.
12 You have to give me an example.

13 Q. For example, when you were demonstrating
14 the dog for Lieutenant Wheeler, the Chief and the
15 city manager?

16 A. That was a straight runaway bite where
17 you're presenting the scenario of a suspect that is
18 actively running away from you. You have visual
19 contact with the suspect. At that point, I shout
20 three warnings, police, stop or I'll send the dog,
21 again three times, and then the dog is released with
22 the word fourdan.

23 Q. What's the word?

24 A. Fourdan.

25 Q. Can you spell that for us?

1 A. F-O-U-R-D-A-N.

2 Q. And you mentioned that you give three
3 warnings prior to sending the dog. How did you come
4 up with three warnings?

5 A. On a straight runaway bite where you had
6 visualize sight of the suspect, that is what is the
7 common practice.

8 Q. Okay. How did you know that that was a
9 common practice?

10 A. That's what we were taught.

11 Q. Okay. Meaning that that's what they
12 taught you, Brian Woods and Robert Hickman, out at
13 Lynnwoods Kennels, and that's what they taught you?

14 A. Correct.

15 Q. Have you been Spike's only handler?

16 A. Yes.

17 Q. Has anybody trained Spike besides the
18 folks up at Lynnwoods Kennels and yourself?

19 A. That's a broad question. In terms of core
20 training or further maintenance training?

21 Q. Tell me what you understand core training
22 to be.

23 A. The core training was the training that
24 was completed at Lynnwoods Kennels teaching me to be
25 a handler.

1 Q. Okay. And then maintenance training would
2 be anything after that?

3 A. Correct.

4 Q. Nobody else participated in the dog's core
5 training besides yourself and the folks at Lynnwoods
6 Kennels, correct?

7 A. Correct.

8 Q. Who were the folks that participated in
9 Spike's training, maintenance training after
10 Lynnwoods Kennels?

11 A. The Miami Valley Police Canine
12 Association.

13 Q. Okay. And would they actually train Spike
14 or would you be there working with Spike at the same
15 time?

16 A. They would be there, while we were
17 working, assisting.

18 Q. Okay. So you actually were doing the
19 training, but they were just sort of providing
20 support, recommendations, that sort of thing?

21 A. They would decoy, they would hide drugs in
22 places where I didn't know about them, things of
23 that nature.

24 Q. Okay. But they did not actually train
25 Spike at those, they just provided training

1 scenarios?

2 A. Correct.

3 Q. Who was responsible for keeping the dog
4 current in its training?

5 A. Me.

6 Q. Okay. What is your understanding of the
7 training requirements for the dog as it gets into
8 service and moving forward, what do you have to do
9 to keep this dog current?

10 A. A minimum number of hours a month.

11 Q. How many hours were required per month,
12 then, to keep Spike current in his training?

13 A. Sixteen in patrol, I believe, and I'm not
14 sure if it's been changed, I can't remember, the
15 narcotics, certain hours close to the same as the
16 patrol.

17 Q. Okay. And to stay current, you had to
18 actually be on patrol for 16 hours per month?

19 A. The minimum --

20 Q. And let me clarify. I want this for
21 during the 2007/2008 time frame, during the times of
22 the Gemperline bite and the Campbell bite, the
23 incidents that we're here today about?

24 A. I don't know the exact number separated,
25 but I can tell you together the minimum was eight

1 hours every other week.

2 Q. Eight hours every other week of what?

3 A. Maintenance training.

4 Q. Now, is that a state requirement, is that
5 a recommendation?

6 A. State.

7 Q. Okay. What did that eight hours every
8 other week consist of?

9 A. Patrol and narcotics training.

10 Q. Would that be strictly training then,
11 training with the dog?

12 A. Yes.

13 Q. During the time that you were with
14 Springboro and Spike was assigned to you, how did
15 you keep track of the training of Spike or the
16 maintenance training of Spike, this eight hours that
17 we talked about?

18 A. Originally, I kept it on computer format
19 in the CATS program, which became way too tedious
20 for me and it was easier to create a written log.

21 Q. Okay. What is the CATS program?

22 A. Canine Activity Tracking Software.

23 Q. Where is this CATS program kept, all this
24 data that you entered into this program?

25 A. On the Springboro Police Department's

1 server.

2 Q. To your knowledge, is it still there, as
3 we sit here today?

4 A. I have no idea.

5 Q. When did you last notice it there?

6 A. September of 2009.

7 MR. BRANNON: I'd, again, make a document
8 request for this CATS program and any
9 information pertaining to the training of
10 Spike in that program. I'm not sure what sort
11 of format it can be gotten in, but if we could
12 add that to my request that the court reporter
13 is running for me as well.

14 Q. You said that the CATS program was a
15 little bit tedious for you and that you started
16 keeping records manually, correct?

17 A. Yes.

18 Q. Tell me about those records.

19 A. It's essentially the same thing except I
20 don't have to input the things into the computer. I
21 write them down in the boxes on the pieces of paper
22 in the training logs.

23 Q. Was it your responsibility, then, to fill
24 out one of these training logs or to document the
25 training of Spike every time you trained Spike?

1 A. Yes.

2 Q. And if I'm understanding how you kept
3 these records correctly then, there should be a
4 piece of paper for every training session that
5 you've had with Spike?

6 A. Yes.

7 Q. Would I then be correct in stating that
8 there's no training session that you had with Spike
9 that wasn't documented?

10 A. There were certain tracks that I did on
11 duty by myself that were short that I wouldn't
12 document sometimes.

13 Q. Would this just be something when you were
14 out on duty, no other calls going on, something to
15 keep you and Spike occupied?

16 A. Yes, sir.

17 Q. So you're running through a short, little
18 routine, correct?

19 A. Yes.

20 Q. But you wouldn't necessarily qualify this
21 as your training time with Spike?

22 A. No.

23 Q. So all of your training time with Spike
24 should be documented in those training records?

25 A. Yes.

1 Q. Where were these training records kept?

2 A. In my locked file cabinet.

3 Q. And where was your locked file cabinet at?

4 A. In the squad room at the police

5 department.

6 Q. And who had access to this locked file

7 cabinet?

8 A. Me.

9 Q. At the time that you left the Springboro
10 Police Department, were all of Spike's training
11 records in that file cabinet?

12 A. Yes.

13 Q. And to your knowledge, are they still
14 there today?

15 A. I don't know where the file cabinet is.

16 Q. When's the last time you've seen all of
17 these records?

18 A. I don't know.

19 Q. Presumably the last time you would have
20 trained Spike, you would have filled out one of
21 these and stuck it in the file cabinet?

22 A. Yes.

23 Q. Do you recall seeing all of these records
24 there in that file cabinet?

25 A. The last time actually that I saw them,

1 they were given to Lieutenant Wheeler to make
2 copies. The originals that were in my filing
3 cabinet, I don't remember the last time I've seen
4 those.

5 Q. Do you recall on what date that was,
6 approximately?

7 A. No, I do not.

8 (Deposition Exhibit S5 was marked for
9 identification.)

10 Q. I've handed you a document that we've
11 marked as S5. Does that look familiar to you?

12 A. Yes.

13 Q. Can you tell me what that is?

14 A. That is a written booklet for training
15 records.

16 Q. Okay. Are these the same training logs
17 that we've been talking about here most recently,
18 the records that you would have kept on Spike, his
19 training records?

20 A. These are the paper ones.

21 Q. Okay. Do you know, approximately, at what
22 point in time you would have started keeping the
23 paper records?

24 A. Somewhere around the time of the first
25 national workshop, which would have been 2006.

1 Q. And you mentioned the first national
2 workshop. What was the first national workshop that
3 you went to in 2006; was that part of your
4 certification for the state or this was additional
5 training after you completed your certification for
6 the state?

7 A. Additional training.

8 Q. Okay. Where was that conducted at?

9 A. Right outside of Cleveland, Ohio. The
10 town's name is Beech something. I don't remember
11 the full name of the town, but it was the North
12 American Police Work Dog 2006 workshop.

13 Q. Okay. And how many days was that?

14 A. Five.

15 Q. And approximately how long after your
16 certification did you do that?

17 A. It was the summer of 2006.

18 Q. And have you completed any additional
19 workshops like that since that time?

20 A. Just in-service workshops.

21 Q. Meaning the ones here locally that you did
22 with the Warren County and Clinton County, other
23 canine units?

24 A. No.

25 Q. Tell me what other workshops you've done

1 then.

2 A. Forty-hour in-service workshop at
3 Lynnwoods Kennels.

4 Q. When was that completed?

5 A. I'd have to see the certificate. I'm sure
6 someone has it.

7 Q. Are we talking back in 2006, more
8 recently, or was that just after -- you've had the
9 dog in service for 40 hours, they --

10 A. 2006/2007 sounds right.

11 Q. And how long was that training up in
12 Lynnwoods Kennels when you went back for that?

13 A. Forty hours.

14 Q. One week, five days?

15 A. Yes.

16 Q. And what did you do with the dog at that
17 point in time?

18 A. I believe we did night tactics, night
19 building searches, just patrol and narcotic
20 training.

21 Q. Okay. Was it more of a refresher course
22 or was this more advanced training than what you
23 received from Lynnwoods initially?

24 A. More advanced.

25 Q. Any other additional training besides what

1 happened up at Lynnwoods and this one up in Beech,
2 wherever it was?

3 A. No.

4 Q. And would that have been in 2007 or before
5 all of this training?

6 A. I believe so.

7 Q. Was this training documented in your
8 canine unit training logs?

9 A. The national workshop, I believe, may have
10 been put onto the computer, the CATS version. I'm
11 not positive about that. It may be in the paper.
12 Honestly, I don't remember.

13 Q. I know that this exhibit -- I'm going to
14 direct you back to the exhibit that I marked as S5.
15 These are a portion of the canine unit training logs
16 that have been provided to me. They have dates on
17 them but no other information. Can you explain to
18 me why they only have the dates on them and no other
19 information?

20 A. Which ones are you looking at?

21 Q. All of those that have been marked as S5,
22 all of these training logs.

23 A. What I would do is I would set them up for
24 an entire month and write the dates in the top
25 right-hand corner. That's daily. Every page is a

1 day -- every other page would be one day. And we
2 did not train every single day.

3 Q. Okay. So you wrote up canine unit
4 training logs in advance in anticipation of doing
5 training?

6 A. Correct.

7 Q. But you did not do any training, so you do
8 not fill out these forms, correct?

9 A. On certain days.

10 Q. Okay. Would I be correct in
11 understanding, then, that if you did do training on
12 certain days, that those forms would have been
13 filled out the rest of the way.

14 A. Yes.

15 Q. And that any one that is blank like these
16 that have been marked as S5, no training was
17 conducted on those days?

18 A. Correct.

19 Q. During Spike's career at Springboro, was
20 he ever taken out of service for any reason?

21 MR. WEISENFELDER: Objection. Go ahead.

22 A. In October he was taken out of service for
23 a review of the policy and procedures regarding the
24 canine program. And then there was a point in time
25 where he was taken out of service due to an injury.

1 He tore his patellar tendon and had to have surgery
2 and it was a very lengthy time.

3 Q. October of what year for the review of
4 policies and procedures?

5 A. 2008.

6 Q. And who took Spike off duty? Is that how
7 you say it? You tell me how you say it when you
8 take a dog out of service.

9 A. That's about it.

10 Q. When Spike went off duty in October of
11 2008, who took him off duty?

12 A. Chief Kruithoff.

13 Q. And you said that that was for a review of
14 policies and procedures?

15 A. Correct.

16 Q. What type of a review of policies and
17 procedures was done at that point?

18 A. A review of policies and procedures.

19 Q. Okay. Who conducted the review?

20 A. Lieutenant Wheeler.

21 Q. And what did Lieutenant Wheeler do as part
22 of this review?

23 A. He reviewed the policies and procedures.

24 Q. Why were they reviewed at this time, to
25 your knowledge?

1 A. A complaint, I believe.

2 Q. What type of complaint?

3 A. A complaint about the bite, or the
4 physical apprehension of Ms. Gemperline.

5 Q. So, to your understanding, somebody made a
6 complaint to the Springboro Police Department in
7 2008 regarding the bite that Ms. Gemperline received
8 and at that point the Chief said, we need to do a
9 review of our policies and procedures?

10 A. Yes.

11 Q. Prior to that point in time, had there
12 ever been another review of policies and procedures
13 concerning the canine?

14 A. There was a review done into the entire
15 event of Mr. Kerns's pursuit.

16 Q. Was that a review of policies and
17 procedures or just an investigation into that event?

18 A. I believe it was an investigation into
19 that event.

20 Q. Okay. So to your knowledge, I know that
21 when you initially -- you had one other discussion
22 with Lieutenant Wheeler way back when you started
23 the program about policies and procedures concerning
24 the canine that we previously discussed, correct?

25 A. Correct.

1 Q. And that the only other discussion that
2 you've had with anybody at Springboro about that has
3 been in this October of 2008 following the
4 Gemperline bite, correct?

5 A. The only other -- can you say that again.

6 Q. The only other discussions that you've had
7 concerning the policies and procedures of Springboro
8 occurred in October of 2008 after the Gemperline
9 incident?

10 A. For policies and procedures, yes.

11 Q. Okay. And you said that Lieutenant
12 Wheeler conducted the review, correct --

13 A. Yes.

14 Q. -- in 2008? And what was determined as a
15 result of the review, did anything change?

16 A. As a result of his review? Are you asking
17 his findings or the end result of all the findings?

18 Q. Tell me what his findings were.

19 A. His findings were that neither I nor the
20 dog had done anything wrong and that there did need
21 to be a review of the policy to see if anything
22 should be input additionally to it.

23 Q. Okay. Do you know what they were talking
24 about, about inputting anything additionally into
25 the policies and procedures?

1 A. I do not.

2 Q. What was the result of that review?

3 A. The chief discontinued the dog program.

4 Q. Spike took an early retirement then?

5 A. Correct.

6 Q. Were you given any reason for why the
7 Chief discontinued the dog program?

8 MR. WEISENFELDER: Objection. Go ahead.

9 A. The Chief told me that I had done nothing
10 wrong, the program had done nothing wrong, but the
11 council did not want to pay out any more money in
12 lawsuits.

13 Q. Had money been paid out previously in
14 lawsuits?

15 A. Not to my knowledge.

16 Q. What happened to Spike?

17 A. He lives with me.

18 Q. Who initially acquired Spike? Who had
19 ownership of Spike when you guys got him from
20 Lynnwoods Kennels?

21 A. The City of Springboro.

22 Q. And did the City of Springboro maintain
23 ownership of Spike up until when?

24 A. I believe it was February 6, 2009.

25 Q. Okay. Who acquired Spike, then,

1 February 6th of 2009?

2 A. Myself.

3 Q. Did you purchase Spike directly from
4 Springboro, did they give him to you, how did that
5 happen?

6 A. He was retired to me.

7 Q. So basically they gave you the dog?

8 A. Correct.

9 Q. How old was Spike at that time?

10 A. Six.

11 Q. Can you tell me what the expected career
12 of a police canine is? How many years did you
13 expect to get out of Spike or how old was Spike
14 going to be when he would have normally retired?

15 A. You asked me two different questions. I
16 can answer both of them.

17 Q. I don't mean to ask you two separate
18 questions at different times. Tell me which one you
19 want to answer and we'll start there.

20 A. The expected career of a police canine, in
21 general, depends on the breed.

22 Q. And for a breed of a Belgian Malinois is
23 what?

24 A. Depends on the individual dog. I've seen
25 them work, working up to 14 years old.

1 Q. And what would the average be then?

2 A. I don't know the average.

3 Q. How long were you expecting to get out of
4 Spike?

5 MR. WEISENFELDER: Objection. If you can
6 answer, go ahead.

7 A. The minimum I expected to get out of him
8 was until he was at least nine.

9 Q. So his retirement had nothing to do with
10 his physical abilities?

11 A. No, it did not.

12 Q. Did we cover both questions there or are
13 there --

14 A. Yes, we did.

15 Q. You also mentioned previously that Spike
16 had an injury leave sometime during his career
17 because of a torn --

18 A. Patellar tendon.

19 Q. Okay. How did Spike suffer a torn
20 patellar tendon?

21 A. Stepped in a mole hole.

22 Q. Did he undergo surgery for that?

23 A. Yes, he did.

24 Q. Did he make a full recovery from that?

25 A. Yes, he did.

1 Q. And what period of time did that occur?

2 A. I don't remember. I could estimate for
3 you.

4 Q. Give me a year, month.

5 A. 2007. I don't know the month. I know it
6 was winter. It was cold outside.

7 Q. Okay. Winter of 2007?

8 A. Winter into spring. It was just starting
9 to warm up.

10 Q. Okay. So early 2007?

11 A. Yes.

12 Q. How long was Spike out of service for?

13 A. A little over six weeks.

14 Q. Was there anything that was done after
15 Spike came back, training-wise, with him to get him
16 back up to speed besides whatever normal training
17 you provided?

18 A. No.

19 Q. Did he do any training during the six
20 weeks that he was off?

21 A. He did nothing.

22 Q. Laid around the house and watched TV?

23 A. He wasn't allowed out of his crate.

24 Q. The incident involving Mr. Campbell
25 occurred, according to records that I've been

1 provided with, on October 21, 2007; is that correct?

2 A. It sounds correct.

3 Q. What type of training were you doing with
4 Spike around that period of time prior to that date?

5 A. The same as I had always done.

6 Q. And tell me what the same is that you've
7 always done.

8 A. I would request from the shift sergeant to
9 go to weekly training.

10 Q. Okay. And would all that training be
11 documented, then, in the canine unit training logs?

12 A. What was approved would be, yes.

13 Q. I think we've already discussed previously
14 that there wouldn't have been any additional
15 training besides what's in those training logs,
16 correct?

17 A. Correct.

18 Q. And I'm going to represent to you also
19 that the Gemperline incident occurred on October 11,
20 2008; does that sound correct to you?

21 A. Yes.

22 Q. And do you recall what type of training
23 you would have been doing with Spike in the two,
24 three months prior to that date?

25 A. The same as my normal training.

1 Q. Okay. And that would have also been
2 documented in your canine unit training logs?

3 A. Yes.

4 Q. At both of those times, you believe that
5 you needed to complete approximately eight hours of
6 training every other week to stay current, correct?

7 A. Correct.

8 Q. Have you ever received any training in how
9 to testify?

10 A. Yes.

11 Q. Tell me about what training you've
12 received in how to testify.

13 A. In the academy, we were trained a brief
14 period of how to testify.

15 Q. Okay. And what sorts of things did they
16 teach you about how to testify?

17 A. To answer clearly and concisely, to try to
18 maintain eye contact back and forth with the jury,
19 and to speak so that everyone can hear you.

20 Q. Okay. Did you ever receive any additional
21 training in how to testify after that?

22 A. No.

23 Q. How about writing reports, have you ever
24 received any training on how to write reports?

25 A. In the academy.

1 Q. Okay. And what did they teach you to do?

2 A. To document the incident.

3 Q. Okay. Were you supposed to document the
4 incident in a statement of facts?

5 A. Correct.

6 Q. Is that statement of facts supposed to be
7 in a chronological order?

8 A. Yes.

9 Q. And you're supposed to write complete and
10 accurate reports about each incident?

11 A. Yes.

12 Q. And you're supposed to put all the
13 important details of that report or that incident in
14 that report, correct?

15 A. Yes.

16 Q. And it's your understanding that when you
17 make a report like that, it's an official report?

18 A. Yes.

19 Q. And that you're required to tell the truth
20 in those reports?

21 A. Yes.

22 Q. Did you complete any reports after
23 arresting Mr. Campbell?

24 A. After he was arrested, I completed a
25 report. I did not arrest him.

1 Q. Okay. Who was the individual that
2 arrested Mr. Campbell?

3 A. Officer Anderkin.

4 Q. And what type of reports did you complete
5 after Mr. Campbell was arrested?

6 A. A canine usage report.

7 Q. And did you create any other reports
8 besides the canine usage report?

9 A. No, I did not.

10 Q. How long after the incident was that
11 report created?

12 A. It would have been later in the morning.

13 Q. And how about for Ms. Gemperline, what
14 type of report would you have created after her
15 arrest?

16 A. In that incident, I created a canine usage
17 report along with a NIBRS report.

18 Q. How long after the incident did you create
19 the use of force report?

20 A. I did not create a use of force report.

21 Q. I'm sorry, the canine usage report.

22 A. The morning, within hours.

23 Q. And you always mentioned a NIBRS report?

24 A. A NIBRS report.

25 Q. Can you tell me what a NIBRS report is?

1 A. An incident report, a standard that would
2 be used with any other event not related specific to
3 canine.

4 Q. Okay. When did you complete the NIBRS
5 report?

6 A. The same day.

7 Q. At the same time that you did the canine
8 usage report?

9 A. The same time period, not the exact same
10 time.

11 Q. I understand, but one after the other or
12 one before the other sometime?

13 A. Yes.

14 Q. And why were you required to create a
15 NIBRS report or why did you create a NIBRS report?

16 A. Because I arrested several individuals at
17 that residence where the initial call took place and
18 they were charged separately. They were not
19 involved with the usage of the dog.

20 Q. So am I correct in believing then or
21 understanding that the NIBRS report did not involve
22 Ms. Gemperline?

23 A. Correct.

24 Q. I know that you stated that you reviewed
25 these reports prior to today, correct?

1 A. Yes.

2 Q. The files on both Mr. Campbell and
3 Ms. Gemperline. How long before today did you
4 review those?

5 A. Yesterday.

6 Q. As part of your training with the dog, did
7 you ever receive a manual or written materials or
8 anything like that?

9 A. No.

10 Q. I'm going to hand you what I would like
11 marked S1.

12 (Deposition Exhibit S1 was marked for
13 identification.)

14 Q. Do you recognize that document?

15 A. Yes.

16 Q. Can you tell me what that document is?

17 A. It's the Springboro Police Department's
18 use of canine policy as of December 10, 2008.

19 Q. So my understanding, then, that the
20 Springboro Police Department did not adopt this
21 particular policy until December 10, 2008?

22 A. Correct.

23 Q. Do you know why this document came about
24 December 10, 2008?

25 A. It was following the review conducted by

1 Lieutenant Wheeler that I informed you of.

2 Q. Okay. That's the October 2008 review
3 following the Gemperline incident?

4 A. Correct.

5 Q. What date did they decide to terminate the
6 canine program at Springboro?

7 A. February -- I believe I gave you that
8 date. I think it's February 6th of 2009.

9 Q. After the Gemperline incident, was Spike
10 ever put back on the road after that October 11,
11 2008 --

12 MR. WEISENFELDER: Objection. Go ahead.

13 Q. -- date?

14 A. No.

15 Q. Did you at all participate in developing
16 this use of canine force policy for Springboro that
17 they did not adopt until December 2008?

18 A. I had nothing to do with that.

19 Q. It states that this policy became
20 effective December 10, 2008 and was then again
21 revised on December 19, 2008. Are you with me there
22 on the last page?

23 A. Yeah.

24 Q. Can you tell me what was revised in those
25 nine days?

1 A. I have no idea.

2 Q. When did they make the determination to
3 terminate the canine program in Springboro?

4 A. February 2009.

5 Q. Okay. So if I'm understanding the events
6 chronologically and if I'm understanding you
7 correctly, to your understanding, Spike was taken
8 out of service after the bite, concerning
9 Gemperline, on or about the October 11, 2008?

10 A. Yes.

11 Q. Springboro then adopted a new use of force
12 policy for the canine October 10th, 2008 and then
13 terminated the program in February of 2009 before a
14 dog was ever put back on duty?

15 A. Correct.

16 Q. If you could hand me the bottom page
17 there?

18 A. This one?

19 Q. Yeah. I know previously we talked about
20 Exhibit S17. S17, I think, was your understanding
21 that that was the canine policy in effect for
22 Springboro prior to the most recent one that's been
23 marked as Springboro Exhibit 1; is that correct?

24 A. Correct.

25 Q. And do you know of any difference between

1 those two policies?

2 A. I have not compared them.

3 Q. Have you ever looked at those, or read the
4 Springboro policy marked as Springboro Exhibit 1?

5 A. I've glanced through it. I've not read
6 the entire thing word for word, no.

7 Q. Okay. Both --

8 MR. BRANNON: You need a break, Wil?

9 MR. WEISENFELDER: No. I'm trying to
10 keep track of things. The first one was
11 marked. All we have is the original. I don't
12 have a copy of it.

13 MR. BRANNON: And I don't have any
14 additional copies to give. If you'd like, we
15 can take a break and make copies.

16 MR. WEISENFELDER: As I said before, it
17 was really merely marked for identification.
18 If we get into questioning about the specific
19 document, I will want a copy.

20 MR. BRANNON: Let's go ahead and take a
21 break and make some copies then.

22 (OFF THE RECORD)

23 BY MR. BRANNON:

24 Q. I am going to show you a binder here and
25 represent to you that certain documents have been

1 provided to me in discovery. Included within some
2 of those documents were the canine unit training
3 logs that we talked about. These are Bates stamped
4 numbered by, I believe, your counsel, Bates numbers
5 36 through 185 right there. I'll give you an
6 opportunity to look through those.

7 A. Do I need to look through all of them or
8 just stipulate they're mine?

9 MR. BRANNON: Off the record.

10 (OFF THE RECORD)

11 BY MR. BRANNON:

12 Q. Mr. Clark, we were talking about your
13 canine unit training logs. There's a number of them
14 there in front of you. Are those the complete and
15 accurate copies of the records and logs that you
16 kept on Spike?

17 A. Yes. After the computer records, those
18 were the paper ones that I kept.

19 Q. Okay. Knowing that those are not included
20 in any computer ones that you kept under the CATS
21 program, does that look like a complete set of the
22 records that you kept a copy of those, meaning
23 that's going to have all the canine unit training
24 logs, to your knowledge, that you would have filled
25 out and kept on Spike?

1 A. Yes.

2 Q. And I know we talked about the records
3 that you kept in your file cabinet on that. Does
4 that appear to be copies of those records?

5 A. Yes.

6 Q. And does that look like the proper amount,
7 we aren't missing any? That's most likely all of
8 them that exist, correct?

9 A. Correct.

10 Q. I'll go ahead and take that back from you.
11 Prior to lunch, we also talked about your
12 certification through the State of Ohio that you
13 would have completed with your canine Spike. How
14 long was that certification good for?

15 A. A period of two years.

16 MR. BRANNON: I'm going to have you mark
17 that as S3.

18 (Deposition Exhibit S3 was marked for
19 identification.)

20 Q. Are you ready?

21 A. Yes.

22 Q. You've had an opportunity to look through
23 S3 which is a series of, I believe, four
24 certificates. Do you recognize those documents?

25 A. I do.

1 Q. Can you tell me what those are?

2 A. They're certificates for the certification
3 from the Office of the Attorney General for the
4 certification of a police working dog.

5 Q. Okay. And it's my understanding that
6 that's the Ohio certification that you need to be
7 compliant in the State of Ohio; is that correct?

8 A. Correct.

9 Q. And it appears that you were first awarded
10 this certificate on May 12, 2005; does that sound
11 right?

12 A. Yes.

13 Q. And then immediately thereafter that's
14 when you and Spike went into service for Springboro?

15 A. Correct.

16 Q. And you had a renewal date on that
17 certificate of, it looks like, April 28, 2007 on one
18 and May 12, 2007 on the other one, meaning the first
19 one being for tracking article search, marijuana,
20 cocaine, and the second one being for criminal
21 apprehension canine control and canine searches,
22 correct?

23 A. Correct.

24 Q. Do you know why there's two different
25 renewal dates on those certificates?

1 A. I have no idea.

2 Q. Okay. But it was your understanding that
3 both of these needed to be renewed every two years?

4 A. My understanding is that's the only time
5 that you can. You can't have it renewed before that
6 date.

7 Q. Okay. Meaning you can't do the work to
8 have it renewed before that date or how does that
9 work when you go to renew?

10 A. You have to contact the state evaluator.
11 The state evaluator comes to renew your
12 certification and review you, but they will not do
13 it before that date.

14 Q. It is your understanding, then, that the
15 dog cannot be in service if these -- if you're not
16 renewed?

17 A. Yes.

18 Q. Okay. And it's also, judging by the last
19 two certificates, it looks like there was a lapse in
20 time for the renewal on Spike; is that correct?

21 A. That's correct.

22 Q. And we already talked about the renewal
23 dates, but it looks like Spike wasn't renewed again
24 until September 26th of 2007; is that correct?

25 A. That's correct.

1 Q. Was Spike deployed in the field at all
2 from the March 28th date, 2007 until September 26,
3 2007?

4 A. I'd have to look at the records, but I
5 don't believe so.

6 Q. Okay. Which records would you need to
7 look at to confirm that?

8 A. My canine activity tracking software to
9 show the dates of each deployment.

10 Q. Where is the canine tracking software,
11 where is this?

12 MR. WEISENFELDER: That's what he
13 mentioned earlier, the CATS, I think.

14 A. The Springboro server.

15 Q. Okay. So the CATS server would show every
16 date that your dog is in service?

17 A. Every day that he's been deployed. Every
18 deployment was listed on that, yes.

19 Q. Okay. But it wouldn't necessarily show
20 you if Spike was in service then, correct --

21 A. Correct.

22 Q. -- meaning out on patrol? That software
23 would only tell you if Spike was deployed during his
24 service?

25 A. Yes.

1 Q. Were you working between that April 28,
2 2007 date and September 26, 2007 date?

3 A. A large majority of that time was spent on
4 light duty working in the office because I had had
5 two wrist surgeries that required me to be
6 incapacitated in my left hand in a brace where I
7 could not move it at all.

8 Q. Okay. Were you on patrol at all during
9 those times?

10 A. At some point but I don't remember the
11 date that I came back from the surgery.

12 Q. Would Spike have been with you if you
13 would have been on patrol during those dates?

14 A. Yes.

15 Q. Was Spike with you every day that you were
16 on patrol --

17 A. No.

18 Q. -- during that time frame?

19 A. No.

20 Q. Why would Spike not have been on patrol
21 with you?

22 A. He had a broken tooth at one point that
23 had to have a root canal and he was off duty for
24 that. He also had a split paw pad and I was unable
25 to do any training with him at one point. And he

1 also had the patellar tendon tear.

2 Q. Okay. We've talked previously about the
3 patellar tendon tear. Let's talk about the tooth
4 now. When did the tooth incident occur?

5 A. I'd have to see the vet records.

6 Q. Who was Spike's vet?

7 A. The initial referring vet was Dr. Beall.
8 The doctor that did the root canal was not
9 Dr. Beall, it was a specialist in Cincinnati.

10 Q. Where are the vet records on Spike kept?

11 A. At the vet's office.

12 Q. Does Springboro keep any of his health
13 records, anything like that?

14 A. Not that I'm aware of.

15 MR. BRANNON: And I'm not exactly sure if
16 we need a release for vet records.

17 MR. WEISENFELDER: My experience is you
18 do.

19 Q. And who would execute that for Springboro
20 for Spike? I guess you're technically the owner of
21 Spike?

22 MR. WEISENFELDER: Let's try it through
23 the city. Send me a release and we'll go
24 through the city. And if the vet balks at the
25 city and wants the owner, we can do that.

1 MR. BRANNON: Let's go ahead and add that
2 to my request of the records sheet that you
3 have been keeping.

4 BY MR. BRANNON:

5 Q. So am I correct then in my understanding
6 that there is no way to show what day Spike was on
7 duty with you and not on duty with you during this
8 time frame?

9 A. The only way to do that would be through
10 the CATS system.

11 Q. Okay. But the CATS system only shows if
12 Spike was actually deployed during that, correct?

13 A. Correct.

14 Q. It does not show if he was on duty?

15 A. Correct.

16 Q. And it's my understanding from your
17 previous testimony that the CATS system, you were
18 not using the CATS system in 2007, that you ceased
19 using the CATS system when you started the canine
20 unit training logs on 5/3/06?

21 A. That's incorrect.

22 Q. That's incorrect. Go ahead and correct me
23 then.

24 A. The correction that I would make is just
25 for the purposes of training. The CATS system is a

1 dual-purpose machine. It records your usages and
2 your training. I used it to report my usages, not
3 my -- I discontinued doing it for training, so my
4 usages were on there.

5 Q. So training went to a manual system but
6 the usages --

7 A. Correct.

8 Q. -- were still using the CATS?

9 A. Yes.

10 Q. Would the most recent bite incident
11 involving Chelsie Gemperline be on the CATS system
12 then?

13 A. Yes.

14 Q. Would that have been the last incident
15 entered into the CATS system most likely?

16 A. Yes.

17 Q. So you cannot tell me whether or not Spike
18 was ever on duty during the lapse in his training
19 certificates, correct?

20 A. Correct.

21 Q. And is this somebody from the State of
22 Ohio that issues these training certificates or is
23 this a master trainer?

24 A. As far as I know, these certificates come
25 mailed from the State of Ohio Attorney General's

1 Office. The evaluator is a state certified trainer
2 and they don't issue a certificate.

3 Q. Do they fill something out, send it up to
4 the state, the state sends you your certificate?

5 A. Correct.

6 Q. I noticed that there are two different
7 areas on these training certificates; one is for
8 tracking article search, marijuana, cocaine, heroin,
9 the other is for criminal apprehension, canine
10 control and canine searches. Did Spike ever obtain
11 any other certifications besides those two?

12 A. No.

13 Q. Are there any additional ones that are
14 issued by the state besides those two?

15 A. Cadaver and bomb.

16 Q. As a dual-purpose dog, was Spike ever
17 trained in cadaver and bomb searches?

18 A. No.

19 Q. Is a cadaver searching dog, is that what's
20 known as a human detector?

21 A. I've never trained cadaver dogs, but
22 the -- I've worked with them and the training aids
23 that they use are real decaying human tissue.

24 Q. Okay. What is a human detector as the
25 term is used in canine terminology?

1 A. As far as patrol or cadaver?

2 Q. Not cadaver related. As you understand it
3 in your dog with your employment with the City of
4 Springboro. If you heard the term human detector in
5 reference to a dog, what does that mean, what's your
6 understanding of that term?

7 A. I've never heard that used that way.

8 Q. Okay. How have you heard it used?

9 A. It's either tracking, building search or
10 area search, if you're talking about finding a
11 human.

12 Q. Okay. Was Spike trained as a human
13 detector in that manner then?

14 A. Yes.

15 Q. So for tracking, building searches, things
16 of that nature?

17 A. Yes.

18 Q. Is an odor the same thing as a scent when
19 a dog is tracking?

20 A. I believe you'd have to refer to the
21 scientists for that one. I think they're still up
22 in debate about that. There's a conflict of
23 interest between the two ideas.

24 Q. What's your understanding of what a scent
25 is?

1 A. A scent can be anything cologne, anything
2 of that nature that gives off an odor.

3 Q. Okay. Is that in relation to the dog as
4 well when you're training with the dog? Are you
5 trained to understand a scent any differently?

6 A. In terms of narcotics, they've trained in
7 odor detection.

8 Q. So is odor something different than a
9 scent then, to your understanding?

10 A. I don't know. I'm not a scientist.

11 Q. Okay. What's your understanding of the
12 term scent, then, in relation to dogs and dog
13 training?

14 A. In relation to dogs, what I've always been
15 told the term scent refers to is more of the lines
16 of a trailing dog, such as a Bloodhound that would
17 use skin cells to trail someone, not to actually
18 track them.

19 Q. Okay. What does a dog look for, then,
20 when doing a tracking if they don't use scent or
21 odor? For example, if Spike was performing a track,
22 would he be using scent, would he be looking for
23 scent and odor, what would he be doing?

24 A. Ground disturbance odor.

25 Q. Okay. Can you tell me what ground

1 disturbance odor is?

2 A. Ground disturbance odor is the disturbance
3 of the ground, in particular, grass, dirt, concrete,
4 asphalt, any type of ground surface. The way the
5 dogs are trained is when that surface is stepped on,
6 the area around it and where the area has been
7 stepped on has been disturbed. It's going to have a
8 different odor than the area that is not disturbed,
9 such as model spores breaking up, grass blades
10 breaking and bleeding. It gives off a much
11 different odor to the dog than the non-disturbed
12 area.

13 Q. Okay. So if I'm understanding you
14 correctly, when you would send Spike on a track,
15 Spike would be sniffing not for human odor but for
16 disturbances in the ground?

17 A. That, again, I would have to refer you to
18 some sort of scientist because even when I was going
19 through dog school, there was a large debate if any
20 human odor actually played into the actual track
21 itself or not, and no one could ever give me an
22 answer.

23 Q. Okay. So my understanding is there's some
24 dispute amongst the canine community, then, when a
25 dog is tracking somebody, whether or not they're

1 smelling human odor residue or ground disturbance,
2 as you described it?

3 A. Correct.

4 Q. Tell me, then, the difference with air
5 scenting. What is air scenting?

6 A. Air scenting to me and the handlers that I
7 worked with was when a dog became closer towards the
8 end of the track and closer towards finding the toy
9 or whatever you had placed out there, he caught an
10 odor of that toy, would pick his head up and begin
11 to use his eyes instead of his nose.

12 Q. Okay. If I'm understanding you correctly,
13 then, when a dog is air scenting, it's probably
14 because he's very close to whatever it is he's
15 searching for, generally?

16 A. I don't know that you can use the term
17 very close. They would depend on variables
18 determined by the weather, humidity, wind direction,
19 the area.

20 Q. Okay. And I'm not giving a specific
21 distance necessarily, but when I say close, would a
22 dog begin air scenting an object within -- are we
23 talking 10 yards, 100 yards?

24 A. It could be either depending on the wind
25 and the area that you're in.

1 Q. But as a handler, when your dog starts air
2 scenting, what is that telling you about your dog?

3 A. It could be that you are close to someone
4 or the end goal and that the dog is looking at that
5 point, and that sometimes you are close and
6 sometimes you're not and the dog puts his head back
7 down and continues to track.

8 Q. So if I'm understanding you, and I sort of
9 have some hunting dogs and that so I think I'm
10 understanding a little bit what air scenting is,
11 it's where a dog gets in an area and the scent
12 becomes so strong that the dog starts looking up
13 visually trying to find whatever it is because the
14 scent odor gets so strong?

15 A. Not necessarily. The strength is strong,
16 but the direction that the dog is getting it from
17 then turns -- he begins working what they call a
18 cone, a scent cone. And the dog will work the
19 direction that the odor is coming from, and that
20 could be any number of distances.

21 Q. And when it's air scenting, it has its
22 head up, though, and it's looking forward in that
23 scent cone, correct?

24 A. Correct.

25 Q. So in reading your dog, when your dog

1 picks its head up, there's a higher likelihood, when
2 it begins air scenting, whatever the search object
3 is is closer, correct?

4 A. Correct.

5 MR. WEISENFELDER: Objection. Go ahead.

6 Q. And as a handler, part of your duties is
7 being able to read your dog, correct?

8 A. Correct.

9 Q. And you're trained in how to read your dog
10 in what his reactions are, correct?

11 A. In how to read your dog, yes.

12 Q. And you respond a lot of times according
13 to how your dog is reacting to a particular
14 situation or stimulus?

15 A. Yes.

16 Q. So how would you describe it when a dog
17 begins air scenting; is that a sign, is that an
18 alert, what would you term that in --

19 A. I would term it as an alert in some
20 circumstances.

21 Q. Okay. What does it mean when a dog
22 alerts?

23 A. Change in body posture, change in
24 breathing.

25 Q. Is that, say, any change in behavior then?

1 A. Yes.

2 Q. So when a dog begins air scenting, that
3 alerts you that something is going on, correct,
4 whether it be, you know -- most likely you're
5 nearing whatever it is you're tracking?

6 MR. WEISENFELDER: Objection. Go ahead.

7 A. Correct.

8 Q. And that air scenting means when the dog
9 is doing that, it's most likely that the dog is
10 detecting a strong odor of whatever it's searching
11 for in that area to the point where he believes that
12 he's close enough to where he picks his head up and
13 starts looking for it; am I understanding that
14 right?

15 A. Generally speaking, but not always the
16 case.

17 Q. Okay. What's the exception? You sort of
18 gave me a yes and no, yes, most of the time.
19 What's, no, not most of the time?

20 A. Again, dealing with an animal and
21 scientific things that I can't explain, but wind
22 directions change, humidity levels, barometric
23 pressure, the dog may detect it earlier than other
24 times. It's a never for sure circumstance of how
25 close you are.

1 Q. Am I correct in also understanding that a
2 dog alerting is equated to a change in behavior and
3 the change of behavior is the same as an alert?

4 A. Yes.

5 Q. Those are two interchangeable items?

6 A. Yes.

7 Q. Would a response also fall into that
8 category or that definition? All three of those,
9 would a response be any different than an alert or a
10 change in behavior?

11 A. I never use the term response. I was
12 never trained to use the word response. I don't
13 know. I never used that word.

14 Q. So the term final response, in regards to
15 dog training, has no meaning to you?

16 A. None.

17 Q. What are some of the responses or alerts
18 or changes in behaviors or indications that Spike
19 gives?

20 A. He will slow down what he's doing. He
21 will begin to look around a little more. His
22 breathing will become accelerated and his posture
23 will change.

24 Q. He slows down sometimes. Does that mean
25 that he's working more meticulously?